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# LAWS

## NAVY AND MARINE CORPS

1898

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U. S. Laws. Statutes &c.
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# UNITED STATES LAWS

RELATING TO THE

# NAVY, MARINE CORPS, ETC.,

COMPILED FROM THE

# REVISED STATUTES

AND

## SUBSEQUENT ACTS TO JUNE 17, 1898,

WITH

## A DIGEST OF THE DECISIONS OF THE COURTS AND OPINIONS OF THE ATTORNEYS-GENERAL.

---

BY

WILLIAM H. MICHAEL

(Late of the U. S. Navy).

AND

PUBLISHED BY AUTHORITY OF CONGRESS.

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# PREFACE.

The necessity for a revision of the laws relating to the Navy and Marine Corps was felt by the Naval Committee of the two Houses of Congress and by the Navy Department, and the Senate, through the Joint Committee on Printing, directed the revision to be made. The Secretary of the Navy tendered any assistance practicable for the Department to extend in accomplishing the work. The Judge-Advocate-General of the Navy, Captain Lemly, examined the proof sheets and noted many valuable suggestions. Mr. E. P. Hanna, chief clerk in the Judge-Advocate-General's Office, read the proofs critically and rendered the reviser most valuable assistance in many ways in connection with the work. The reviser takes pleasure in acknowledging the valuable service thus rendered him.

This revision includes all laws relating to the Navy and Marine Corps up to and including June 17, 1898.

To keep the book within proper limits as to size, much matter contained in Mr. Hogg's compilation, which did not strictly relate to the Navy and Marine Corps nor to the Navy Department, was expurgated.

The arrangement is somewhat different from that of Mr. Hogg, yet in a general way his arrangement has been preserved, for the reason that it was considered very good, and because it was thought desirable not to disturb the familiarity of those who had used the Hogg compilation by substituting for it a compilation wholly different in its arrangement.

The notes have been completely revised, and instead of retaining them as they were in the Hogg compilation they have been uniformly inserted as footnotes.

At the end of the work may be found the gist of decisions of Federal courts and opinions of Attorneys-General construing United States statutes relating to the Navy and Marine Corps and Navy Department. This is alphabetically arranged, and the author feels confident that it will be found of value.

While the compiler is conscious that defects and errors will be met with in this revision, as is the case in all works of similar character, yet he feels that it will serve the purpose for which it is intended reasonably well.

There have been six compilations and revisions of the laws relating to the Navy and Marine Corps. The first was a volume of 198 pages, and was compiled in 1826 by order of the Secretary of the Navy. The second was by Benjamin Homans, of the Navy Department, and was compiled in 1843. This volume contains 246 pages, and includes the laws of the Twenty-seventh Congress. The third was compiled in 1859 by John F. Callan, clerk to the Military Committee, and A. W. Russell, clerk to the Naval Committee of the United States Senate, and contains 464 pages. The fourth was a revision of Mr. Homans's work, and was printed in 1865. It contains 253 pages. The fifth was made by order of the Navy Department in 1875, and includes the laws of the Forty-third Congress. This volume contains 374 pages. The sixth was a compilation and revision by John W. Hogg, made in 1883, and contains 401 pages.



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# LAWS.

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SEC. 1624. The Navy of the United States shall be governed by the following articles:

Title 15, chap. 10.

Articles established.
July 17, 1862, s. 1, v. 12, p. 600.

ARTICLE 1. The commanders of all fleets, squadrons, naval stations, and vessels belonging to the Navy, are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in

Commander's duty of supervision and correction.
July 17, 1862, s. v., 112, p. 600.

inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct.

Divine service. July 17, 1862, s. 1, v. 12, p. 600.

ART. 2. The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

Irreverent behavior. Ibid., art. 2.

ART. 3. Any irreverent or unbecoming behavior during divine service shall be punished as a general or summary court-martial may direct.

ART. 4. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

Mutiny. See Title Mutiny, Division IV.

First. Who makes, or attempts to make, or unites with any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it; or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

Disobedience of orders.

Second. Or disobeys the lawful orders of his superior officer;

Striking superior officer.

Third. Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

Intercourse with an enemy.

Fourth. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President, the Secretary of the Navy, the commander-in-chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

Messages from an enemy.

Fifth. Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

Desertion in time of war. See secs. 1996–1998, Desertion.

Sixth. Or, in time of war, deserts or entices others to desert;

Deserting trust.

Seventh. Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

Sleeping on watch.

Eighth. Or sleeps upon his watch;

Leaving station.

Ninth. Or leaves his station before being regularly relieved;

Willful stranding or injury of vessel.

Tenth. Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

Unlawful destruction of public property.

Eleventh. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

Twelfth. Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarters;

Striking flag or treacherously yielding. See note 1.

Thirteenth. Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

Cowardice in battle.

Fourteenth. Or, in time of battle, deserts his duty or station, or entices others to do so;

Deserting duty in battle.

Fifteenth. Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

Neglecting orders to prepare for battle.

Sixteenth. Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

Neglecting to clear for action.

Seventeenth. Or does not, upon signal for battle, use his utmost exertions to join in battle;

Neglecting to join on signal for battle.

Eighteenth. Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

Failing to encourage the men to fight.

Nineteenth. Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

Failing to seek encounter.

Twentieth. Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies when engaged in battle.

Failing to afford relief in battle. Apr. 23, 1800, v. 2, p. 47; July 17, 1862, v. 12, p. 601.

ART. 5. All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge.

Spies. July 17, 1862, s. 1, v. 12, p. 602, art. 4; Feb. 13, 1862, s. 4, v. 12, p. 340; Mar. 3, 1863, s. 38, v. 12, p. 737. See note 2.

ART. 6. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death.

Murder. July 17, 1862, s. 1, v. 12, p. 602, art. 5. [See Piracy, etc., Division IV.]

ART. 7. A naval court-martial may adjudge the punishment of imprisonment for life, or for a stated term, at hard labor, in any case where it is authorized to adjudge the punishment of death; and such sentences of imprisonment and hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or

Imprisonment in a penitentiary. July 17, 1862, s. 1, v. 12, p. 602, art. 6. See note 3.

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*Note 1.*—By inadvertance the statute reads "quarters." It should read *quarter*.

*Note 2.*—Such other punishment is limited only to that kind of punishment which has become usual. (Op., X, 159.) Sentence of incapacity or disability not within that range. Can only be awarded when specially authorized by law. (Naval contractor's case, Op., XII, 528.) To be limited to the customs of the service. Cruel and unusual punishments are forbidden by the law-martial and the Constitution. (Op., X, 160.) See art. 5.

*Note 3.*—A naval or marine court-martial, upon conviction for an offense not capital, under articles 7 and 8, may sentence to imprisonment at hard labor. (Op., XII, p. 510, Evarts, Oct. IX, 1868; X, p. 158, Bates, Nov. 1, 1861; IX, p. 80, Black, Sept. 5, 1857.) It is held in Army practice that a sentence of penitentiary confinement in a case of a purely military offense is wholly unauthorized and should be disapproved. Larceny, embezzlement, violent crime, or other offenses made punishable with penitentiary confinement by the law of the State, etc., may be legally visited with this punishment. (Winthrop's Digest, p. 115, new ed.) The same principles are now applied by the Navy Department. See art. 7.

which the United States may be allowed, by the legislature of any State, to use; and persons so imprisoned in the prison or penitentiary of any State or Territory shall be subject, in all respects, to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which the same may be situated.

Profanity, falsehood, etc.

ART. 8. Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy—

First. Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;

Cruelty.

Second. Or is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders;

Quarreling.

Third. Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward, any person in the Navy;

Fomenting quarrels.

Fourth. Or endeavors to foment quarrels between other persons in the Navy;

Duels.

Fifth. Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

Contempt of superior officer.

Sixth. Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while in the execution of his office;

Combinations against superior officer.

July 17, 1862, s. 1, v. 12, p. 602, art. 7.

Seventh. Or joins in or abets any combination to weaken the lawful authority of, or lessen the respect due to, his commanding officer;

Mutinous words.

April 23, 1800, art. 13. v. 2, p. 47.

Eighth. Or utters any seditious or mutinous words;

Neglect of orders.

Ninth. Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;

Preventing destruction of public property.

Tenth. Or does not use his best exertions to prevent the unlawful destruction of public property by others;

Negligent stranding.

Eleventh. Or, through inattention or negligence, suffers any vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded;

Negligence in convoy service.

Twelfth. Or, when attached to any vessel appointed as convoy to any merchant or other vessels, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crews of such merchant or other vessels;

Receiving articles for freight.

Thirteenth. Or takes, receives, or permits to be received, on board the vessel to which he is attached, any goods or merchandise, for freight, sale, or traffic, except gold, silver, or jewels, for freight or safe-keeping; or demands or receives any compensation for the receipt or transportation of any other article than gold, silver, or jewels, without authority from the President or Secretary of the Navy;

False muster.

Fourteenth. Or knowingly makes or signs, or aids, abets, directs, or procures the making or signing of, any false muster;

Waste of public property, etc.

Fifteenth. Or wastes any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste;

Plundering on shore.

Sixteenth. Or, when on shore, plunders, abuses, or maltreats any inhabitant, or injures his property in any way;

Seventeenth. Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;

Refusing to apprehend offenders.

Eighteenth. Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;

Refusing to receive prisoners.

Nineteenth. Or is absent from his station or duty without leave, or after his leave has expired;

Absence from duty without leave.

Twentieth. Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;

Violating general orders or regulations.

Twenty-first. Or, in time of peace, deserts or attempts to desert, or aids and entices others to desert;

Desertion in time of peace.

Twenty-second. Or receives or entertains any deserter from any other vessel of the Navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander-in-chief, or to the commander of the squadron.

Harboring deserters. Apr. 23, 1800, v. 2, p. 47; July 17, 1862, v. 12. p. 602.

ART. 9. Any officer who absents himself from his command without leave, may, by the sentence of a court-martial, be reduced to the rating of an ordinary seaman.

Officer absent without leave may be reduced. May 16, 1864, s. 2, v. 13, p. 75.

ART. 10. Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

Desertion by resignation. Aug. 5, 1861, s. 2. v. 12, p. 316.

[See Dismissal; also, Desertion, Division 1.

ART. 11. No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the Navy, or at navy-yards or naval stations, for his own account or benefit.

Dealing in supplies on private account. Aug. 26, 1842, s. 1, v. 5, p. 535.

ART. 12. No person connected with the Navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty.

Importing dutiable goods in public vessels. July 30, 1846, s. 10, v. 9, p. 44.

ART. 13. Distilled spirits shall be admitted on board of vessels of war only upon the order and under the control of the medical officers of such vessels, and to be used only for medical purposes.

Distilled spirits only as medical stores. July 14, 1862, s. 4, v. 12, p. 565.

ART. 14. Fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States—

Certain crimes of fraud against the United States. See note 2, p. 9.

Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Presenting false claims.

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Agreement to obtain payment of false claims.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim

False papers.

against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

Perjury.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Forgery.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Delivering less property than receipt calls for.

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the naval service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Giving receipts without knowing truth of.

Who, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, furnished or intended for the naval service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Stealing, wrongfully selling, etc.

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully and knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of the United States, furnished or intended for the military or naval service thereof; or

Buying public military property.
Mar. 2, 1863, s. 1, v. 12, p. 696.

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same; or

Other frauds.
July 17, 1862, art. 7, v. 12, p. 602.

Who executes, attempts, or countenances any other fraud against the United States.

Liable to arrest and trial after discharge and dismissal.
Mar. 2, 1863, s. 2, v. 12, p. 697.

And if any person, being guilty of any of the offenses described in this article while in the naval service, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

List of persons claiming prize-money.
July 17, 1862, s. 5, v. 12, p. 607.
See sec. 4615, Prize.

ART. 15. The commanding officer of every vessel in the Navy entitled to or claiming an award of prize-money shall, as soon as it may be practicable after the capture, transmit to the Navy Department a complete list of the officers and

men of his vessel entitled to share, stating therein the quality of each person rating; and every commanding officer who offends against this article shall be punished as a court-martial may direct.

Removing property from a prize. July 17, 1862, s. 7, v. 12, p. 607.

ART. 16. No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court-martial may direct.

Maltreating persons taken on a prize. July 17, 1862, s. 8, v. 12, p. 607.

ART. 17. If any person in the Navy strips off the clothes of, or pillages, or in any manner maltreats, any person taken on board a prize, he shall suffer such punishment as a court-martial may adjudge.

Returning fugitives from service. Mar. 13, 1862, s. 1, v. 12, p. 354.

ART. 18. If any officer or person in the naval service employs any of the forces under his command for the purpose of returning any fugitive from service or labor, he shall be dismissed from the service.

Enlisting deserters, minors, etc. Mar. 3, 1865, s. 18, v. 13, p. 490; May 12, 1879, v. 21, p. 3. See note 4.

ART. 19. Any officer who knowingly enlists into the naval service any deserter from the naval or military service of the United States, or any insane or intoxicated person, or any minor between the ages of *fourteen* and eighteen years, without the consent of his parents or guardian, or any minor under the age of *fourteen* years, shall be punished as a court-martial may direct.

ART. 20. Every commanding officer of a vessel in the Navy shall obey the following rules:

Men received on board.

First. Whenever a man enters on board, the commanding officer shall cause an accurate entry to be made in the ship's books, showing his name, the date, place, and term of his enlistment, the place or vessel from which he was received on board, his rating, his descriptive list, his age, place of birth, and citizenship, with such remarks as may be necessary.

List of officers, men, and passengers.

Second. He shall, before sailing, transmit to the Secretary of the Navy a complete list of the rated men under his command, showing the particulars set forth in rule one, and a list of officers and passengers, showing the date of their entering. And he shall cause similar lists to be made out on the first day of every third month and transmitted to the Secretary of the Navy as opportunities occur, accounting therein for any casualty which may have happened since the last list.

Deaths and desertions.

Third. He shall cause to be accurately minuted on the ship's books the names of any persons dying or deserting, and the times at which such death or desertion occurs.

Property of deceased persons.

Fourth. In case of the death of any officer, man, or passenger on said vessel, he shall take care that the paymaster

*Note 4.*—Secs. 1418, 1419, and 1420, Revised Statutes, have been amended forbidding the enlistment of minors under *fourteen* instead of fifteen years of age.

secures all the property of the deceased, for the benefit of his legal representatives.

Accounts of men received.

Fifth. He shall not receive on board any man transferred from any other vessel or station to him, unless such man is furnished with an account, signed by the captain and paymaster of the vessel or station from which he came, specifying the date of his entry on said vessel or at said station, the period and term of his service, the sums paid him, the balance due him, the quality in which he was rated, and his descriptive list.

Accounts of men sent from the ship.

Sixth. He shall, whenever officers or men are sent from his ship, for whatever cause, take care that each man is furnished with a complete statement of his account, specifying the date of his enlistment, the period and term of his service, and his descriptive list. Said account shall be signed by the commanding officer and paymaster.

Inspection of provisions.

Seventh. He shall cause frequent inspections to be made into the condition of the provisions on his ship, and use every precaution for their preservation.

Health of crew.

Eighth. He shall frequently consult with the surgeon in regard to the sanitary condition of his crew, and shall use all proper means to preserve their health. And he shall cause a convenient place to be set apart for sick or disabled men, to which he shall have them removed, with their hammocks and bedding, when the surgeon so advises, and shall direct that some of the crew attend them and keep the place clean.

Attendance at final payment of crew.

Ninth. He shall attend in person, or appoint a proper officer to attend, when his crew is finally paid off, to see that justice is done to the men and to the United States in the settlement of the accounts.

Articles to be hung up and read.

Tenth. He shall cause the articles for the government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company.

Punishment for offending against this article.
July 17, 1862, s. 16, v. 12, p. 609.

Every commanding officer who offends against the provisions of this article shall be punished as a court-martial may direct.

Authority of officers after loss of vessel.
July 17, 1862, s. 14, v. 12, p. 609.

ART. 21. When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court-martial or court of inquiry shall be held to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the Navy, he shall be punished as a court-martial may direct.

Offenses not specified.
See note 5.

ART. 22. All offenses committed by persons belonging to the Navy which are not specified in the foregoing article shall be punished as a court-martial may direct.

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See art. 22.

*Note 5.*—On board a United States vessel of war on the Thames River, under way, opposite New London, a fatal assault was committed upon a member of the crew by another. *Held*, that a naval court-martial could, under article 22, section 1624, Revised Statutes, take jurisdiction of the offense as manslaughter. The State authorities could have tried the case, but it would not have ousted the court-martial of jurisdiction over the same offense so far as it affected the order and discipline of the ship. (Op., XVI, 578, published in General Order Navy Department 259, January 25, 1881.)

ART. 23. All offenses committed by persons belonging to the Navy while on shore shall be punished in the same manner as if they had been committed at sea.

Offenses committed on shore. July 17, 1862, s. 1, v. 12, p. 602, arts. 8 and 9.

ART. 24. No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days, unless a further period is necessary to bring the offender to trial by a court-martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offense, or at any one time, any other than one of the following punishments, namely:

Punishment by order of commander. July 17, 1862, s. 1, v. 12, p. 603, art. 10.

First. Reduction of any rating established by himself.

Second. Confinement, with or without irons, single or double, not exceeding ten days, unless further confinement be necessary, in the case of a prisoner to be tried by court-martial.

Third. Solitary confinement, on bread and water, not exceeding five days.

Fourth. Solitary confinement not exceeding seven days.

Fifth. Deprivation of liberty on shore.

Sixth. Extra duties.

No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a general or summary court-martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log.

ART. 25. No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement.

Punishment by officers temporarily commanding. Apr. 23, 1800, s. 1, v. 2, p. 49, art. 30.

ART. 26. Summary courts-martial may be ordered upon petty officers and persons of inferior ratings, by the commander of any vessel, or by the commandant of any navy-yard, naval station, or marine barracks to which they belong, for the trial of offenses which such officer may deem deserving of greater punishment than such commander or commandant is authorized to inflict, but not sufficient to require trial by a general court-martial.

Summary courts-martial. Mar. 2, 1855, s. 4, v. 10, p. 627; July 15, 1870, s. 14, v. 16, p. 334.

ART. 27. A summary court-martial shall consist of three officers not below the rank of ensign, as members, and of a recorder. The commander of a ship may order any officer under his command to act as such recorder.

Constitution of summary courts-martial. Mar. 2, 1855, ss. 5, 6, v. 10, p. 628.

ART. 28. Before proceeding to trial the members of a summary court-martial shall take the following oath or affirmation, which shall be administered by the recorder: "I, A B, do swear (or affirm) that I will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and my own conscience." After which the recorder of the court shall take the following oath or affirmation, which shall be administered by the senior member of the court: "I, A B, do swear (or affirm) that I will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

Oath of members and recorder. Mar. 2, 1855, s. 5, p. 628.

Testimony.

ART. 29. All testimony before a summary court-martial shall be given orally, upon oath or affirmation, administered by the senior member of the court.

Punishments by summary courts.

ART. 30. Summary courts-martial may sentence petty officers and persons of inferior ratings to any one of the following punishments, namely:

Mar. 2, 1855, s. 7, p. 628.

First. Discharge from the service with bad conduct discharge; but the sentence shall not be carried into effect in a foreign country.

Second. Solitary confinement, not exceeding thirty days, in irons, single or double, on bread and water, or on diminished rations.

Third. Solitary confinement in irons, single or double, not exceeding thirty days.

Fourth. Solitary confinement not exceeding thirty days.

Fifth. Confinement not exceeding two months.

Sixth. Reduction to next inferior rating.

Seventh. Deprivation of liberty on shore on foreign station.

Eighth. Extra police duties, and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments.

Disrating for incompetency.
July 17, 1862, s. 1, art. 10, v. 12, p. 603.

ART. 31. A summary court-martial may disrate any rated person for incompetency.

Execution of sentence of summary court.
Mar. 2, 1855, s. 8, v. 10, p. 628; Mar. 2, 1867, s. 5, v. 14, p. 516.
See note 6.

ART. 32. No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court and by the commander-in-chief, or, in his absence, by the senior officer present. And no sentence of such court which involves loss of pay shall be carried into execution until the proceedings and sentence have been approved by the Secretary of the Navy.

Remission of sentence.
Mar. 2, 1855, s. 8 v. 10, p. 628.

ART. 33. The officer ordering a summary court-martial shall have power to remit, in part or altogether, but not to commute, the sentence of the court. And it shall be his duty either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced; or to submit the case again, without delay, to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

Manner of conducting proceedings.
Mar. 2, 1855, s. 9, p. 628.

ART. 34. The proceedings of summary courts-martial shall be conducted with as much conciseness and precision as may be consistent with the ends of justice, and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President; and

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See art. 32.

*Note 6.*—The proceedings of all general and summary courts-martial and courts of inquiry, after action thereon by the reviewing officer, will be forwarded direct to the Judge-Advocate-General of the Navy, accompanied by a communication addressed to him. All communications pertaining to questions of law before such courts, requiring the action of the Department, must also be addressed to him. (See U. S. Navy Regulations, 1896.)

all such proceedings shall be transmitted, in the usual mode, to the Navy Department.

ART. 35. Any punishment which a summary court-martial is authorized to inflict may be inflicted by a general court-martial.

Same punishments by general court-martial. Mar. 2, 1855, s. 10, p. 628.

ART. 36. No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof.

Dismissal of officers. July 13, 1866, s. 5, v. 14, p. 92.

ART. 37. When any officer, dismissed by order of the President since 3d March, 1865, makes, in writing, an application for trial, setting forth, under oath that he has been wrongly dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And if such court-martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.

Officer dismissed by the President may demand trial. Mar. 3, 1865, s. 12, v. 13, p. 489.

See act June 22, 1874, p. —. Accounting officers. See Dismissal, Division 1.

ART. 38. General courts-martial may be convened by the President, the Secretary of the Navy, or the commander-in-chief of a fleet or squadron; but no commander of a fleet or squadron in the waters of the United States shall convene such court without express authority from the President.

General courts-martial, by whom convened. July 17, 1862, s. 1, art. 11, v. 12, p. 603.

ART. 39. A general court-martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be convened without injury to the service, shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside and the others shall take place according to their rank.

Constitution of. July 17, 1862, s. 1, art. 11, v. 12, p. 603. See note 7.

ART. 40. The president of the general court-martial shall administer the following oath or affirmation to the judge-advocate or person officiating as such:

Oaths of members and judge-advocate. Mar. 2, 1855, s. 1, art. 12, p. 603. See note 8.

"I, A B, do swear (or affirm) that I will keep a true record of the evidence given to and the proceedings of this court; that I will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

This oath or affirmation being duly administered, each member of the court, before proceeding to trial, shall take

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*Note 7.*—The *minority* of some of the members of a court-martial is not available as an objection to the validity of the proceedings. (Op., XVI, 550.) See art. 39.

*Note 8.*—Special counsel may be employed by the Attorney-General at the request of the Secretary of the Navy to assist the Judge-Advocate in the trial by court-martial. (18 A. G. op., p. 135, Garland, March 21, 1885.)

the following oath or affirmation, which shall be administered by the judge-advocate or person officiating as such:

"I, A B, do swear (or affirm) that I will truly try without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and my own conscience; that I will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

Oath of witness. Mar. 2, 1855, s. 1, art. 14, p. 603.

ART. 41. An oath or affirmation in the following form, shall be administered to all witnesses, before any court-martial, by the president thereof:

"You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God; (or 'this you do under the pains and penalties of perjury.')"

Contempts of court. Id., art. 13.

ART. 42. Whenever any person refuses to give his evidence or to give it in the manner provided by these articles, or prevaricates, or behaves with contempt to the court, it shall be lawful for the court to imprison him for any time not exceeding two months.

Charges. Id., art. 15; Mar. 16, 1878, v. 20, p. 30.

ART. 43. The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable time shall be given to the accused to make his defense against such new charge. *The person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.*

See note 9.

Duty of officer arrested. July 17, 1862, art. 15, v. 12, p. 604.

ART. 44. Every officer who is arrested for trial shall deliver up his sword to his commanding officer and confine himself to the limits assigned him, on pain of dismissal from the service.

Suspension of proceedings. Id., art. 16.

ART. 45. When the proceedings of any general court-martial have commenced, they shall not be suspended or delayed on account of the absence of any of the members, provided five or more are assembled; but the court is enjoined to sit from day to day, Sundays excepted, until

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*Note 9.*—Article 43 of the Articles for the Government of the Navy (Rev. Stat., 1624) requiring the accused to be furnished with a copy of the charges and specifications "at the time he is put under arrest," refers to his arrest for trial by court-martial; and, if he is already in custody to await the result of a court of inquiry, is sufficiently complied with by delivering the copy to him immediately after the Secretary of the Navy has informed him of that result, and has ordered a court-martial to convene to try him. (Johnson v. Sayre, 158 U. S., p. 109.)

sentence is given, unless temporarily adjourned by the authority which convened it.

ART. 46. No member of a general court-martial shall, after the proceedings are begun, absent himself therefrom, except in case of sickness, or of an order to go on duty from a superior officer, on pain of being cashiered.

Absence of members. Id., art. 16.

ART. 47. Whenever any member of a court-martial, from any legal cause, is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court, and the recorded testimony of each witness so examined must be read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case.

Witnesses examined in absence of a member. Id., art. 17.

ART. 48. Whenever a court-martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension.

Suspension of pay. Id., art. 18.

ART. 49. In no case shall punishment by flogging, or by branding, marking, or tattooing on the body be adjudged by any court-martial or be inflicted upon any person in the Navy.

Flogging, branding, etc. Id., art. 8; June 6, 1872, s. 2, v. 17, p. 261.

ART. 50. No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes.

Sentences, how determined. July 17, 1862, s. 1, v. 12, p. 605, art. 19.

ART. 51. It shall be the duty of a court-martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense; but the members thereof may recommend the person convicted as deserving of clemency, and state, on the record, their reasons for so doing.

Adequate punishment; recommendation to mercy. See art. 35, Summary Courts-martial. Id., art. 21.

ART. 52. The judgment of every court-martial shall be authenticated by the signature of the president, and of every member who may be present when said judgment is pronounced, and also of the judge-advocate.

Authentication of judgment. Id., art. 22.

ART. 53. No sentence of a court-martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court.

Confirmation of sentence. Id., art. 19.

ART. 54. Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute, the sentence of any such court which he is authorized to approve and confirm.

Remission and mitigation of sentence. Id., art. 20. See note 10.

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*Note 10.*—A milder punishment may be substituted by the President for dismissal. In mitigating, may substitute suspension without pay, which is an inferior degree of the same punishment. Mitigation must be of the punishment adjudged by reducing and modifying its severity, except in case of death, where there is no inferior degree. The Executive can not add to the punishment; can not suspend pay or

See art. 54.

Courts of inquiry, by whom ordered.
July 17, 1862, s. 1, v. 12, p. 605, art. 23.
See note 11.

ART. 55. Courts of inquiry may be ordered by the President, the Secretary of the Navy, or the commander of a fleet or squadron.

Constitution of.
Id., art. 23.

ART. 56. A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge-advocate, or person officiating as such.

Powers of.
Id., art. 23.

ART. 57. Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts, in the same manner as courts-martial; but they shall only state facts, and shall not give their opinion, unless expressly required so to do in the order for convening.

Oath of members and judge-advocate.
Id., art. 25.

ART. 58. The judge-advocate, or person officiating as such, shall administer to the members the following oath or affirmation: "You do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality." After which the president shall administer to the judge-advocate, or person officiating as such, the following oath or affirmation: "You do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing."

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emoluments where they were not suspended by the court. Sentence of suspension merely does not deprive the party of pay or emoluments. Where forfeiture or loss of pay is made part of the sentence, in addition to confinement or suspension from duty, the former may be remitted by the proper authority, in whole or in part, without also remitting the latter. (Op., IV, 432, 444; V, 45; VI, 200; XV, 175.)

It is well settled that it is beyond the power of the President to annul or revoke the sentence of a court-martial which has been approved and executed under a former President. The rule is not confined to cases in which the sentence is required to be approved by the President. (Op., X, 64. Refers to Op., I, 486; IV, 170, 274; VI, 369, 514; VII, 98.)

Forfeiture or loss of pay, by confinement or suspension from duty, under a sentence of a court-martial, is not incurred unless the forfeiture or loss be imposed by the sentence. (Op., XV, 175.)

The action of an officer who ordered the court, on forwarding the proceedings with the indorsement "that the finding of the court is not sustained by the evidence," can not be deemed to be a disapproval of the sentence of the court. Such disapproval should be distinctly expressed. (Op., XVI, 312.)

Notice by the Secretary of the Navy of the approval by the President of the sentence of a court-martial is sufficient evidence of approval and promulgation. (Op., XVI, 550; see also XV, 290.) Sign-manual of the President not necessary.

A disapproval of a sentence by the proper reviewing officer, release from confinement, and restoration to duty is tantamount to an acquittal by the court. (Op., XIII, 459.)

When the sentence of a court-martial, lawfully confirmed, has been executed, the proceedings in the case are no longer subject to review by the President. (Op., XV, 290.) In a note to this opinion, observations are submitted upon the authority of the President to appoint general courts-martial in cases other than those in which he is expressly authorized to do so by Congress, and the conclusion reached that such authority is well established.

A midshipman was nominated and confirmed as an ensign, subject to examination, but subsequently tried, never having been examined, and sentenced to be dismissed. Under the circumstances, was properly tried as a midshipman. (Op., XVI, 550.)

Any person having an interest in the record of a naval court-martial is entitled to have an exemplified copy of it, after the proceedings are consummated by the proper authority. (Op., XI, 137.)

See arts. 55 to 60.

*Note 11.*—Courts of inquiry are open or close, as the authority ordering them may determine. (De Hart, 276.) Their reports are not decisions, but advice, only for information of Executive. They are not subject to statutes of limitation. May be ordered at any subsequent date. (Op., VIII, 335; VI, 239.) A court of inquiry can not be ordered on a civilian. A body of officers convened to inquire into and report on the facts of the case of an officer who has been legally dismissed is a mere board of investigation, and can exercise none of the special powers of a court-martial or court of inquiry. (Winthrop's Digest, 125; see same as to powers of boards of investigation.)

A copy of the record of a court of inquiry is not to be furnished to parties, or their agents, as a matter of right, as is the copy of the record of a court-martial. (Holt's Digest, 43.)

ART. 59. The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses.

Rights of party inquired of. Id., art. 23. See act of Mar. 16, 1878, as noted under General Courts-Martial, art. 43.

ART. 60. The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge-advocate, and shall, in all cases not capital, nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court-martial, provided oral testimony cannot be obtained.

Proceedings, how authenticated and used as evidence.

ART. 61. No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period.

Trials to be within two years of committing offense.

ART. 62. No person shall be tried by court-martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of the limitation:

Trials for desertion in time of peace. Sup. R. S., ch. 128; 28 Stat. L., 680; articles amended, R. S., s. 1624.

*Provided*, That said limitation shall not begin until the end of the term for which said person was enlisted in the service.

Time limit to run from end of term. Feb. 25, 1895.

ART. 63. Whenever, by any of the Articles for the Government of the Navy of the United States, the punishment on conviction of an offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.

Punishment for offenses in time of peace. Sup. R. S., 1892, p. 389; 28 Stat. L., 689; articles amended, R. S., s. 1624. Feb. 27, 1895. Sup., chap. 137.

## MISCELLANEOUS PROVISIONS.

Sec.
1433. Exercise of consular powers.
1440. Appointments in diplomatic service.
1442. Furloughing officers.
1547. Regulations and general orders.
1548. Officers to be furnished general orders.
1571. Sea service defined.
1586. Medicines and medical expenses.
1587. Funeral expenses.
1860. Voting and holding office in Territories.
2002. Bringing troops to places of election.
Sec.
2003. Interference in elections.
5510. Depriving citizens of civil rights.
5528. Troops at elections.
5529. Intimidating voters.
5530. Prescribing voters' qualifications.
5531. Interfering in elections.
5532. Disqualification to hold office.
Act Mar. 3, 1883. Credit for volunteer service.
Act Jan. 31, 1881. Acceptance of decorations.
Act Mar. 3, 1883. Employment on shore duty.

SEC. 1433. The commanding officer of any fleet, squadron, or vessel acting singly, when upon the high seas or in any foreign port where there is no resident consul of the United States, shall be authorized to exercise all the powers of a consul in relation to mariners of the United States.

Title 15, chap. 2. Consular powers. Feb. 20, 1845, s. 2, v. 5, p. 725.

Accepting appointments in diplomatic service.
Mar. 30, 1868, s. 2, v. 15, p. 58.

SEC. 1440. If any officer of the Navy accepts or holds an appointment in the diplomatic or consular service of the Government, he shall be considered as having resigned his place in the Navy, and it shall be filled as a vacancy.

Furloughing officers.
Mar. 3, 1835, s. 1, v. 4, p. 756; Mar. 3, 1845, s. 6, v. 5, p. 794; Feb. 28, 1855, s. 3, v. 10, p. 617; June 1, 1860, s. 4, v. 12, p. 27. See note 1. See same section under Furlough, Title, "Pay and allowances."

SEC. 1442. The Secretary of the Navy shall have authority to place on furlough any officer on the active list of the Navy.

Title 15, chap. 7.

Regulations.
July 14, 1862, s. 5, v. 12, p. 565. See note 2.

SEC. 1547. The orders, regulations, and instructions issued by the Secretary of the Navy prior to July 14, 1862, with such alterations as he may since have adopted, with the approval of the President, shall be recognized as the regulations of the Navy, subject to alterations adopted in the same manner.

Copy to be furnished to officers.
July 17, 1862, s. 19, v. 12, p. 610.

SEC. 1548. The Secretary of the Navy shall cause each commissioned or warrant officer of the Navy, on his entry into the service, to be furnished with a copy of the regulations and general orders of the Navy Department then in force, and thereafter with a copy of all such as may be issued.

Title 15, chap. 8.

Sea service.
June 1, 1860, s. 3, v. 12, p. 27. See note 3.

SEC. 1571. No service shall be regarded as sea service except such as shall be performed at sea, under the orders of a Department and in vessels employed by authority of law.

Medicines and medical attendance.
July 15, 1870, s. 17, v. 16, p. 334.

SEC. 1586. Expenses incurred by any officer of the Navy for medicines and medical attendance shall not be allowed unless they were incurred when he was on duty, and the medicines could not have been obtained from naval supplies, or the attendance of a naval medical officer could not have been had.

Funeral expenses.
July 15, 1870, s. 17, v. 16, p. 334.

SEC. 1587. No funeral expense of a naval officer who dies in the United States, nor expenses for travel to attend the funeral of an officer who dies there, shall be allowed. But

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See sec. 1442.

*Note 1.—Furloughed*, in ordinary sense of the administration of the Department, is a question of duty and pay, not of rank or place on the roll of the Navy. The officer may be restored by the same power, retains his place in the line of promotion, and it can not be occupied by another. (Op., VIII, 223, Dec. 10, 1856.)

See sec. 1547.

*Note 2.*—Congress is empowered by the Constitution to make Navy Regulations. Those made by the President or subordinates must be in execution of and supplemental to the statutes and statute regulations. (Op., VI, p. 10; see also X, p. 413; XIII, p. 9.)

A regulation of the Department (Treasury) made in pursuance of an act of Congress becomes a part of the law, and is of the same force as if incorporated in the body of the act itself. (U. S. v. Barrows, 1 Abbott, U. S. R., 351.)

A regulation of a Department is a rule made by the head of such Department for its action, under a statute conferring such power, and has the force of law; a mere order of the President, or the Secretary of the Department, is not a regulation. (Court of Claims, III, p. 39.)

The Navy Regulations on the subject of payments to administrators and under wills are to be construed as binding only upon the officers and seamen of the Navy; they are not applicable to nor binding upon the accounting officers of the Treasury Department in the settlement of naval accounts, and it was not intended that they should control these officers. (Op., XVI, p. 494, Devens, May 21, 1880.) The general tenor of this opinion is that the Navy Regulations are not intended to affect any persons except those subject to the orders of the Secretary of the Navy.

See sec. 1571.

*Note 3.*—The service which entitles an officer to the pay allowed for "duty at sea" begins when, having been ordered to a particular duty, he reports himself, in obedience to the orders, at the place designated and enters upon that duty. (Op., X, p. 191, Feb. 19, 1862, and p. 97, Aug. 13, 1861, Bates.)

when an officer on duty dies in a foreign country the expenses of his funeral, not exceeding his sea-pay for one month, shall be defrayed by the Government, and paid by the paymaster upon whose books the name of such officer was borne for pay.

See note 4.

SEC. 1860. * * * Third. No officer, soldier, seaman, mariner, or other person in the Army or Navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is, and has been for the period of six months, his permanent domicile.

Title 23, chap. 1.

Voting and holding office in Territories.

Mar. 2, 1853, s. 5, v. 10, p. 174; Feb. 8, 1861, s. 8, v. 12, p. 174; Mar. 3, 1883, 22 Stat. L., 567.

Fourth. No person belonging to the Army or Navy shall be elected to or hold any civil office or appointment in any Territory, *except officers of the Army on the retired list.*

See note 5.

SEC. 2002. No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.

Title 26.

Bringing armed troops to places of election.

See secs. 5528, 5529, 5530, 5532.

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

Interference with freedom of elections.

See secs. 5530, 5531.

Feb. 25, 1865, s. 1, v. 13, p. 437.

SEC. 5510. Every person who, under color of any law, statute, ordinance, regulation, or custom, subjects, or causes to be subjected, any inhabitant of any State or Territory to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both.

Title 70, chap. 7.

Depriving citizens of civil rights.

May 31, 1870, s. 17, v. 16, p. 144.

SEC. 5528. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control, any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States or to keep the peace at the polls, shall be fined not more than five thousand dollars, and suffer im-

Unlawful presence of troops at elections.

See secs. 2002, 5531, 5532.

Feb. 25, 1865, s. 1, v. 13, p. 437.

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*Note 4.*—Section 1587 prohibits the allowance of the funeral expenses of an officer who dies in the United States. The fact that an officer had started on foreign service, but died in a port of the United States at which his vessel had touched, does not relieve the case from the prohibition in the statute. (Op., XIII, p. 341, Nov. 17, 1870, case of Captain Harrison.) Not held by the Navy Department as prohibiting an allowance of an officer's funeral expenses, to the limit in the statute, who dies *at sea* on the way home from a foreign station. (Case of Captain Lewis, 1880.)

See sec. 1587.

*Note 5.*—By provision of subsequent legislation officers on the retired list may legally hold civil office when elected thereto or appointed by the President and confirmed by the Senate.

prisonment at hard labor not less than three months nor more than five years.

Intimidation of voters.
See sec. 2003.
Ibid., s. 2.

SEC. 5529. Every officer or other person in the military or naval service who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State, shall be fined not more than five thousand dollars, and imprisoned at hard labor not more than five years.

Officers of Army or Navy prescribing qualifications of voters.
See sec. 2003.

SEC. 5530. Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State, shall be punished as provided in the preceding section.

Officers, etc., of Army or Navy interfering with officer of election, etc.
Ibid., s. 2.

SEC. 5531. Every officer or other person in the military or naval service who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section fifty-five hundred and twenty-nine.

Disqualification for holding office.
Ibid., ss. 1, 2.

SEC. 5532. Every person convicted of any of the offenses specified in the five preceding sections, shall, in addition to the punishments therein severally prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing in those sections shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

**Mar. 3, 1883.**

Credit for regular and volunteer service.
Mar. 3, 1883, p. 473 (naval appropriation act); 22 Stat. L., p. 473, Aug. 5, 1882.

And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer army or navy.

Benefit of previous service to officers reappointed.
July 26, 1894, ch. 165, par. 1, *ante*, p. 206.

That all officers who have been or may be appointed to any corps of the Navy or to the Marine Corps after service in a different corps of the Navy or of the Marine Corps shall have all the benefits of their previous service in the same manner as if said appointments were a reentry into the Navy or into the Marine Corps.

No master, mate, pilot, or engineer of steam vessels licensed under title fifty-two of the Revised Statutes shall be liable to draft in time of War, except for the performance of duties such as required by his license;

May 28, 1896.
29 Stat. L., 188.
Supp. R. S., vol. 2, p. 488.
Exemption from draft.
R. S., Title LII.
See note 6.

and, while performing such duties in the service of the United States, every such master, mate, pilot, or engineer shall be entitled to the highest rate of wages paid in the merchant marine of the United States for similar services;

Wages for naval service.

and, if killed or wounded while performing such duties under the United States, they, or their heirs, or their legal representatives shall be entitled to all the privileges accorded to soldiers and sailors serving in the Army and Navy, under the pension laws of the United States.

Pensions, etc.

SEC. 3. That all laws or parts of laws in conflict with this Act are hereby repealed.

Repeal.

No decoration, or other thing, the acceptance of which is authorized by this act, and no decoration heretofore accepted, or which may hereafter be accepted, by consent of Congress, by any officer of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same.

Jan. 31, 1881.
Acceptance of decorations.
Jan. 31, 1881, s. 2, chap. 32, P. E., p. 80.

Hereafter any present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress.

Ibid., s. 3.
See also Bribes, Presents, etc., Division IV.

Hereafter no officer of the Navy shall be employed on any shore duty, except in cases specially provided by law, unless the Secretary of the Navy shall determine that the employment of an officer on such duty is required by the public interests, and he shall so state in the order of employment, and also the duration of such service, beyond which time it shall not continue.

Mar. 3, 1883.
Employment on shore duty.
Mar. 3, 1883, s. 2, 22 Stat. L., p. 481 [naval appropriation act]; Aug. 5, 1882, s. 3.

That judges-advocate of naval general courts-martial and courts of inquiry, and all commanders-in-chief of naval squadrons, commandants of navy-yards and stations, and officers commanding vessels of the Navy, and the adjutant and inspector, commanding officers and recruiting officers of the Marine Corps be, and the same are hereby, authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration.

Jan. 25, 1895.
28 Stat. L., 639.
Supp. R. S., 1892-95, p. 368.
Navy and Marine Corps.
Oaths may be administered by certain officers.
R. S., s. 1624, arts. 28, 29, 40, 41, 57, 58.

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*Note 6.*—A naval officer can not lawfully serve as a master of a private steam vessel in the merchant service without having previously obtained the license required by sec. 4438, R. S., although he may be eligible by virtue of his commission to take command of a steam vessel of the United States in the naval service. (Op., XV, 61, Pierrepont, Oct. 26, 1875, Commander Philips's case.)

See act of Mar. 3, 1883.

## CHAPLAINS.

Sec.
1395. Number and appointment of.
1396. Qualifications of.
1397. Form of worship.
1398. Annual report.
1479. Rank.
1481. Rank when retired from age, etc.
1556. Pay.

Title 15, chap. 1.

Number and appointment of. Apr. 21, 1806, s. 3, v. 2, p. 390; Apr. 16, 1814, s. 5, v. 3, p. 125; Aug. 4, 1842, s. 1, v. 5, p. 500.

SEC. 1395. There shall be in the Navy, for the public armed vessels of the United States in actual service not exceeding twenty-four chaplains, who shall be appointed by the President with the advice and consent of the Senate.

Qualifications of. July 14, 1862, s. 7, v. 12, p. 565. See note 1.

SEC. 1396. A chaplain shall not be less than twenty-one nor more than thirty-five years of age at the time of his appointment.

Form of worship. June 1, 1860, s. 1, v. 12, p. 24.

SEC. 1397. Every chaplain shall be permitted to conduct public worship according to the manner and forms of the church of which he may be a member.

Annual report. June 1, 1860, s. 1, v. 12, p. 24.

SEC. 1398. Chaplains shall report annually to the Secretary of the Navy the official services performed by them.

Title 15, Chap. 4.

Rank. Mar. 3, 1871, s. 9, v. 16, p. 536. See same sec., "Rank and Precedence."

SEC. 1479. Chaplains shall have relative rank as follows: Four, the relative rank of captain; seven, that of commander; and not more than seven, that of lieutenant-commander or lieutenant.

Rank when retired for age or length of service. Mar. 3, 1871, s. 11, v. 16, p. 337.

SEC. 1481. * * * Chaplains, * * * who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and * * * who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of commodore.

Title 15, Chap. 8.

Pay. July 15, 1870, s. 3, v. 16, p. 331.

SEC. 1556. Chaplains, during the first five years after date of commission, when at sea, two thousand five hundred dollars; on shore duty, two thousand dollars; on leave, or waiting orders, one thousand six hundred dollars; after five years from such date, when at sea, two thousand eight hundred dollars; on shore duty, two thousand three hundred dollars; on leave, or waiting orders, one thousand nine hundred dollars.

## CIVIL ENGINEERS.

Sec.
416. In Bureau Yards and Docks.
1413. Appointment of civil engineers.
1478. Rank. General order.
1556. Pay.

Title 10.

Yards and Docks. July 5, 1862, v. 12, p. 510.

SEC. 416. There shall be in the * * * Bureau of Yards and Docks: one civil engineer. * * *

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See sec. 1396.

*Note 1.*—Under this act the President can not appoint a chaplain above the age of thirty-five, although before its passage he had instructed the Secretary of the Navy to prepare the nomination of the person to the Senate. (Op., X, p. 324, Bates, Aug. 28, 1862.)

SEC. 1413. The President, by and with the advice and consent of the Senate, may appoint a civil engineer * * * at each of the navy-yards where such officers may be necessary.

Title 15, chap. 1.
Appointment at navy-yards.
Mar. 2, 1867, s. 1, v. 14, p. 490; June 17, 1868, s. 1, v. 15, p. 69.

SEC. 1478. Civil engineers shall have such relative rank as the President may fix.

Title 15, chap. 4.
Rank.
Mar. 3, 1871, s. 9, v. 16, p. 536. See same sec., "Rank and Precedence."

The President of the United States has this day, under the provisions of section 1478 of the Revised Statutes, conferred relative rank on civil engineers of the Navy, and fixed the same as follows:

One with the relative rank of captain.
Two with the relative rank of commander.
Three with the relative rank of lieutenant-commander.
Four with the relative rank of lieutenant.

See note 1.

Civil engineers will take precedence in their corps, and with other officers with whom they hold relative rank, in accordance with the law regulating precedence of officers of the Navy.

General Order 263, Feb. 24, 1881.

SEC. 1556. * * * Civil engineers, during the first five years after date of appointment, when on duty, two thousand four hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; during the second five years after such date, when on duty, two thousand seven hundred dollars; on leave, or waiting orders, one thousand eight hundred dollars; during the third five years after such date, when on duty, three thousand dollars; on leave, or waiting orders, two thousand one hundred dollars; after fifteen years from such date, when on duty, three thousand five hundred dollars; on leave, or waiting orders, two thousand six hundred dollars.

Title 15, chap. 8.
Pay.
July 15, 1870, s. 3, v. 16, p. 331.

SEC. 7. That section two of the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes, approved July thirty-first, eighteen hundred and ninety-four, shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment. * *

June 3, 1896.
29 Stat. L., 202. Supp. R. S., v. 2, p. 498.
Rivers and harbors.
Retired army and navy officers may be employed and compensated.
July 31, 1894, ch. 174, s. 2, *ante* p. 212.
Became a law notwithstanding the President's veto, June 3, 1896.

*Note 1.*—See Ops., XV, pp. 165, 597; XVI, p. 203, and June 17, 1881.

## CONTRACTS, SUPPLIES, ETC.

Sec.
1549. Regulations of supplies.
3648. Advances of public money on contracts.
3709. Advertisements for proposals.
3710. Opening bids.
3714. Contracts for the military or naval service, how controlled.
3718. Naval supplies to be furnished by contract.
3719. Guarantee.
3720. Record of bid and report to Congress.
3721. Purchase without advertisements.
3722. What bids may be rejected, etc.; opening bids.
3723. Contracts for foreign supplies for the Navy.
3724. Rejection of excessive bids.
3725. Hemp.
3726. Preserved meats, etc.
3727. Flour and bread.
3728. Home manufactures to be preferred; fuel.
3729. Bunting.
3730. Relinquishment of reservations on deliveries.
3731. Name of contractor to appear on supplies.
3732. Unauthorized contracts prohibited.
3733. No contract to exceed appropriation.
2734. Restrictions on commencement of new buildings.
3735. Contracts limited to one year.
3736. Restriction on purchases of land.
3737. No transfer of contract.
3738. Eight hours to be a day's work.
3739. Members of Congress not to be interested in contracts.
3740. What interest Members of Congress may have.
3741. Stipulation that no Member of Congress has an interest.
3742. Penalty against officer for making contract with a Member of Congress.
3743. Deposit of contracts.
3744. Contracts to be in writing.
3745. Oath to contract.
3746. Penalty for omitting returns.
3747. Instructions.
512–515. Returns office.
5503. Contracting beyond appropriations.
Rent of buildings.
Materials for steam boilers.
Tobacco for the Navy.
Cotton cordage for the Navy.
Life-saving dress.
Torpedoes for the Navy.
Small stores fund.
3711. Inspection of fuel in District of Columbia; appointment of inspectors, etc.
3712. Appointment of inspectors, etc., to be notified to accounting officers.
3713. No payment without certificates.
28 Stat., p. 278. Material men.

Title 15, chap. 7.

Regulations of supplies.
Aug. 26, 1842, s. 2, v. 5, p. 535; Mar. 3, 1847, s. 1, v. 9, p. 171.
See note 1.

**SEC. 1549. It shall be the duty of the President to make, subject to the provisions of law concerning supplies, such regulations for the purchase, preservation, and disposition of all articles, stores, and supplies for persons in the Navy, as may be necessary for the safe and economical administration of that branch of the public service.**

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See sec. 1549.

*Note 1.*—Authority given by Congress to make a contract implies none to change it after it is made. (Op., IX, 80, 104; see *post*, Supreme Court Decisions.)

Where a contract is made, after advertisement, with the lowest bidder, the head of a Department has no authority to modify its terms in regard to time of delivery, or any other of its material elements. (Op., IV, Sept. 24, 1844, p. 334.)

Can not be renewed and extended at the pleasure of a head of a Department. No extension, unless for a period fixed as an alternative in the proposals, is authorized or sanctioned by law. (Op., XIII, 175, Dec. 4, 1869.)

An act directing the Secretary of the Navy to enter into a contract is not a contract per se. The Secretary makes the contract, and may vary the details. (Wallace, VIII, p. 358; C. C., I, 28.)

Where the Secretary of the Navy may enter into a contract for the construction of a vessel, he may suspend the work contracted for and agree with the contractors as to the compensation to be paid for the partial completion of the same. (C. C., II, p. 126; Otto, V, 91, p. 321.)

When a contract is closed the general rule is that it must be executed without change of terms, which are not subject, in general, to change at the will of either party or of both parties. (Op., X, 480.) Later authorities appear to favor the exercise, by the head of a Department, of a discretion to consent to modifications of detail, in the course of the execution of public contracts, when such modifications (not being in contravention of law) are found to be for the public interest, and are not of such a character as to operate to the pecuniary disadvantage of the United States. (Winthrop's Digest cites Otto 91, p. 321, and Op., XV, 481.)

Where Congress authorized the examination of a claim and appropriated a sum not exceeding a fixed amount to pay it, and a less sum was found due, *held* that the appropriation was exhausted when latter amount was paid. (Op., IX, 451; see Op., IX, 449, as to principles governing payment of money to a citizen under a special act of Congress.)

In breach of contract the law contemplates two elements of damage: (1) Losses sustained; (2) gains prevented. (C. C., VII, 543; affirmed by S. C.)

A military board of survey is an ex parte tribunal; decision not binding on a contractor, its proceedings not evidence against him, etc. (C. C., VIII, p. 213.) The award by a commission on a contract can be refused to be received, or the contractor can accompany his receipt of it with a proper protest. (*Idem.* See also C. C., II, 95.)

The sureties of a contractor are not responsible for fulfillment, after his death, on what are called personal contracts, where skill or taste is required. (Op., VI, p. 410.)

A claim for damages was adjusted by the appropriate Department on a basis to

[*Par. 1.*] Naval Supply Fund: (1) And the Secretary of the Treasury is hereby authorized and directed to cause the general account of advances to be charged with the sum of one million dollars, in addition to the sum of two hundred thousand dollars, provided in the Act approved March third, eighteen hundred and ninety-three, and the three hundred thousand dollars, provided in the Act approved June tenth, eighteen hundred and ninety-six, making in all one million five hundred thousand dollars, which amount shall be carried to the credit of the permanent naval supply fund, to be used under the direction of the Secretary of the Navy in the purchase of supplies for the naval service, and to be reimbursed from the proper naval appropriations, whenever the supplies purchased under said fund are issued for use. * *

March 3, 1897.
29 Stat. L., 648.
Supp. R. S., vol. 2, p. 599.
Navy.
Permanent naval supply fund.

SEC. 3648. No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. * * *

Title 40.
Advances of public money on contracts.
Jan. 31, 1823, s. 1, v. 3, p. 723.
See act of May 5, 1894.
18 A. G. Op., p. 105.
See note 2.
Supp. R. S., vol. 2, p. 517.

That hereafter no payment shall be made from appropriations made by Congress to any officer in the Navy or Marine Corps on the active or retired list while such officer is employed, after June thirtieth, eighteen hundred and ninety-seven, by any person or company furnishing naval supplies or war material to the Government;

Payment forbidden to officers employed by contractors.
R. S., § 5498.

and such employment is hereby made unlawful after said date. * *

Employment forbidden.

SEC. 3709. All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals.

Title 43.
Advertisements for proposals.
Mar. 2, 1861, s. 10, v. 12, p. 220; June 22, 1874, v. 18, p. 177.
See notes 3 and 4.
See act of Jan. 27, 1894, amending this section.
See sec. 3718, same title.

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which the contractor agreed. His acceptance and receipt, in full, for the sum allowed is a bar to his suit for a further sum. (S. C., Otto, 104, 464; see also Wallace, XIV, 535.)

Rescinding or renouncing contracts (see C. C., I, 61, 336; III, 38; V, 496; VII, 331; VIII, 67, 319; Op., X, 416). Government delaying or preventing performance by contractor (see C. C., IV, 258, 271; IX, p. 244; Op., XI, 263). Government requesting alterations (C. C., IX, 50; Wallace, XVII, p. 592). Willingness and efforts to perform (C. C., VII, 93; V, 490; Wallace, VIII, 77). Fraudulent contracts (Wallace, VII, 463). Set offs (Op., IV, 380, XI, 120; C. C., XVII, 39, 236, 322). Fines and penalties (Op., IX, 32). Erasures and substitution of items (C. C., II, 366; Wallace, VIII, 489; Op., XV, 226; C. C., V, 215).

*Note 2.*—This section (3648) does not preclude a payment in any case where the money has been actually earned and the Government has received an equivalent therefor; its object is to prevent payment being made to contractors in advance of the performance of their contracts, whether for services or supplies (18 A. G., 105).

*Note 3.*—This section invests the officer charged with the duty of contracting for supplies, or services, with discretion to dispense with advertising if the exigencies of the service require immediate delivery or performance. (C. C., VII, 93; S. C., Wallace, VIII, 77; see also Op., III, 437; C. C., I, 48; VII, 84; II, 96; IX, 291.)

*Note 4.*—A navy paymaster purchasing under instructions from commanding officer, entitled to credit for sum expended, although purchased without advertising. (C. C., XV, 247.)

**Mar. 2, 1891.**

26 Stat. L., 799. Supp. R. S., p. 900.

Naval supplies, how purchased and issued.

R. S., s. 3718. Mar. 2, 1889, ch. 371, *ante*, p. 678.

See note 5.

All supplies hereafter purchased with moneys appropriated for any branch of the naval establishment shall be purchased, classified, and issued for consumption or use subject to the provisions contained in the act making appropriations for the naval service, approved June thirtieth, eighteen hundred and ninety, in reference to supplies therein provided for and on hand.

**June 30, 1890.**

26 Stat. L., 205.

Supplies to be deemed naval and not bureau supplies.

All supplies purchased with moneys appropriated by this act shall be deemed to be purchased for the Navy and not for any bureau thereof, and these supplies, together with all supplies now on hand, shall be arranged, classified, consolidated, and catalogued, and issued for consumption or use, under such regulations as the Secretary may prescribe, without regard to the bureau for which they were purchased.

**Jan. 27, 1894.**

28 Stat. L., 33. Supp. R. S., 1892-95, p. 169.

Advertisements for proposals for all Departments.

R. S., s. 3709.

See notes 6, 7, and 8.

—except for certain printing and engraving.

—to be simultaneous.

Bids, when opened.

That section thirty-seven hundred and nine of the Revised Statutes is amended by adding thereto the following:

And the advertisement for such proposals shall be made by all the Executive Departments, including the Department of Labor, the United States Fish Commission, the Interstate Commerce Commission, the Smithsonian Institution, the Government Printing Office, the government of the District of Columbia, and the superintendent of the State, War, and Navy building, except for paper and materials for use of the Government Printing Office, and materials used in the work of the Bureau of Engraving and Printing, which shall continue to be advertised for and purchased as now provided by law, on the same days and shall each designate two o'clock post meridian of such days for the opening of all such proposals in each Department and other Government establishment in the city of Washington;

And the Secretary of the Treasury shall designate the day or days in each year for the opening of such proposals and give due notice thereof to the other Departments and Government establishments.

Such proposals shall be opened in the usual way and

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Attorney-General's opinion, Sept. 22, 1894, vol. 21, p. 59.

*Note 5.*—All purchases and contracts for supplies in any of the Departments of the Government must be made by advertisement unless immediate delivery is necessary. The first two sentences of section 3709, Revised Statutes, as amended by the acts of January 27, 1894, chapter 22, and April 21, 1894, chapter 61, apply to purchases anywhere in the United States. The remaining three sentences apply only to purchases in the city of Washington.

The word "miscellaneous," in the urgent deficiency act of April 21, 1894, section 2, must be restricted to that class of commodities which must be purchased on a considerable scale and used alike by many or all of the various Departments and Government establishments in the city of Washington.

*Note 6.*—R. S., sec. 3709, provides for advertisement for public supplies or services, except in cases of public exigency.

*Note 7.*—See limitation upon this act, 1894, Apr. 21, ch. 61, sec. 2.

*Note 8.*—The laws in regard to advertisements for proposal are contained in the following acts: R. S., sec. 3709 (see note 5 above). R. S., sec. 3828, no advertisement is to be published without authority from the head of a Department. By 1876, July 31, ch. 246, par. 2 (1 Supp. R. S., 114), advertisements are not to be published in the District of Columbia unless the contracts are to be performed there. By 1878, June 20, ch. 359, pars. 4, 5 (1 Supp. R. S., 202), no more than commercial rates are to be paid for advertisements. By 1881, Jan. 21, ch. 25 (1 Supp. R. S., 314), advertising in the District of Columbia is regulated.

Special provisions in regard to advertising for the Navy.

In the naval service: In general, R. S., secs. 3718 to 3729; 1890, June 30, ch. 640, par. 3 (1 Supp. R. S., 762); 1893, Mar. 3, ch. 212, par. 6.

Plate iron, 1878, June 14, Res. No. 30 (1 Supp. R. S., 205).

Tobacco, 1881, Mar. 3, ch. 147 (1 Supp. R. S., 326).

Gun steel or armor, 1893, Mar. 3, ch. 212, par. 9, p. 131.

schedules thereof duly prepared and, together with the statement of the proposed action of each Department and Government establishment thereon, shall be submitted to a board, consisting of one of the Assistant Secretaries of the Treasury and Interior Departments and one of the Assistant Postmasters-General, who shall be designated by the heads of said Departments and the Postmaster-General respectively, at a meeting to be called by the official of the Treasury Department, who shall be chairman thereof, and said board shall carefully examine and compare all the proposals so submitted and recommend the acceptance or rejection of any or all of said proposals. And if any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner.

—to be submitted to joint board.

—acceptance or rejection.

SEC. 2. That the act entitled "An Act to amend Section thirty-seven hundred and nine of the Revised Statutes relating to contracts for supplies in the Departments at Washington," approved January twenty-seven, eighteen hundred and ninety-four, be, and the same is hereby, so amended that the provisions thereof shall apply only to advertisements for proposals for fuel, ice, stationery, and other miscellaneous supplies to be purchased at Washington for the use of the Executive Departments and other Government establishments therein named; and no advertisements made or contracts awarded or to be awarded thereon since January twenty-seven, eighteen hundred and ninety-four, in accordance with the laws in force prior to said date, shall be declared to be illegal or invalid for noncompliance with said law of January twenty-seventh, eighteen hundred and ninety-four.

Act approved April 21, 1894.

SEC. 3710. Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

Opening bids. Jan. 31, 1868, 8, Res., v. 16, p. 246.

SEC. 3714. All purchases and contracts for supplies or services for the military and naval service shall be made by or under the direction of the chief officers of the Departments of War and of the Navy, respectively. And all agents or contractors for supplies or service as aforesaid shall render their accounts for settlement to the accountant of the proper Department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the Treasury in the manner before prescribed.

Contracts for the military or naval service, how controlled. July 16, 1798, s. 3, v. 1, p. 610; Feb. 27, 1877, v. 19, p. 249.

SEC. 3718. All provisions, clothing, hemp, and other materials of every name and nature, for the use of the Navy [*excepting ordnance, gunpowder, or medicines, or the supplies which it may be necessary to purchase out of the United States*

Naval supplies to be furnished by contract.

See sec. 3709.

See note 9.

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*Note 9.*—The acceptance of the proposition of a bidder creates a contract of the same force and effect as if a formal contract had been written out and signed by the parties. (Otto, 93, 242; C. C., XVII, 92; see Op., XV, 648, as to time in which bids may be withdrawn.)

See sec. 3718.

When a party furnishes sureties and binds himself for the performance of his bid, if accepted, the contract becomes mutual and binding from the moment of its accept-

Mar. 3, 1843, v. 5, p. 617; Aug. 5, 1854, s. 1, v. 10, p. 585; Sept. 28, 1850, s. 1, v. 9, p. 513; Apr. 17, 1866, s. 4, v. 14, p. 38.

See act of June 30, 1890, amending this section.

*for vessels on foreign stations; bunting, cheese, things contraband of war, preserved meats, pickles, butter, and desiccated vegetables, flour, fuel, and materials for boilers. Sections* 3721, 3726, 3727, 3728, 3729, *and acts of June* 14, 1878, *and March* 3, 1881], and the transportation thereof, when time will permit, shall be furnished by contract, by the lowest bidder, as follows: In the case of provisions, clothing, hemp, and other materials, the Secretary of the Navy shall advertise, once a week, for at least four weeks, in one or more of the principal papers published in the place where such articles are to be furnished, for sealed proposals for furnishing the same, or the whole of any particular class thereof, specifying the classes of materials and referring bidders to the several chiefs of Bureaus, who will furnish them with printed schedules, giving a full description of each and every article, with dates of delivery, and so forth. In the case of transportation of such articles, he shall advertise for a period of not less than five days. All such proposals shall be kept sealed until the day specified in such advertisement for opening the same, when they shall be opened by or under the direction of the officer making such advertisement, in the presence of at least two persons. The person offering to furnish any class of such articles, and giving satisfactory security for the performance thereof, under a forfeiture not exceeding twice the contract price in case of failure, shall receive a contract for furnishing the same.

June 14, 1878.

20 Stat. L., 253. Supp. R. S., 1892-5, p. 205.

Materials for steam boilers for Navy may be purchased without advertisement.

That on and after the passage of this act, the Secretary of the Navy be, and he is hereby authorized to purchase at the lowest market price, such plate iron and other material as may enter into the construction of steam boilers for the Navy without advertising for bids to furnish the same:

R. S., s. 3709, 3718.

—notices of, to principal dealers.

*Provided*, That he shall cause to be sent to the principal dealers and manufacturers of iron and such other materials as may be required specifications of the quality description and character of such iron and materials so required:

—subject to test. R. S., s. 4130.

*And provided further*, That such plate iron and materials shall be subjected to the same tests and inspection as now provided for and which inspection and tests shall be made publicly and in presence of such bidders or their authorized agents as may choose to attend at the making thereof.

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ance, although a formal written contract is to be subsequently executed. (C. C., vol. I, 192.)

A formal notice to a bidder of the acceptance of his bid and of the award of the contract to him is beyond recall, and binding on the United States as a completed obligation. An award thus made is in the nature of a preliminary contract. (Op., XV, 226.)

Head of Department has power in advertising for proposals to reserve "the right to reject any and all bids if, in his judgment, the interests of the Government require it." Right of lowest bidder perfect against others, but does not exclude the counter right of the head of the Department of considering, in the interest of the Government, the whole subject, and deciding whether it be fit that any bid should be accepted. (Op., XIV, 682.)

The statutory advertisement for proposals does not enlarge, control, or change the express terms of the contract, and is to be considered as merged therein. (C. C., V, p. 416.)

The advertisement and the proposals in response thereto do not form a part of the subsequent contract, and can not be admitted to contradict or vary the terms thereof. (C. C., VIII, 501.)

Under a contract for a certain quantity of an article, or more if required, a Department is not precluded from advertising for new proposals and awarding a contract for a superior article. Not obliged to receive more than the specified quantity. (Op., XVI., 183; see also Op., X, 93.)

It shall be the duty of the Bureau of Provisions and Clothing to cause property accounts to be kept of all the supplies pertaining to the naval establishment, and to report annually to Congress the money value of the supplies on hand at the various stations at the beginning of the fiscal year, the dispositions thereof, and of the purchases, and the expenditures of supplies for the year, and the balances remaining on hand at the end thereof.

Mar. 2, 1889.
25 Stat. L., 809. Supp. R. S., p. 678.
Bureau of Provisions and Clothing in Navy to keep accounts of supplies on hand and report to Congress.
R. S., s. 419.
Feb. 14, 1879, ch. 68, par. 1, *ante*, p. 216.

Bureau of Provisions and Clothing, hereafter to be called Bureau of Supplies and Accounts. * * *

July 19, 1892.
27 Stat. L., 236. Vol. 2, Supp. R. S., p. 40.
Bureau of Supplies and Accounts.
See note 10.

And all laws now in force relating to the Bureau of Provisions and Clothing shall now and hereafter apply to the Bureau of Supplies and Accounts.

Bureau of Supplies and Accounts.
Laws in force.
See note 11.

And the Secretary of the Treasury is hereby authorized and directed to cause general account of advances to be charged with the sum of two hundred thousand dollars, which amount shall be carried to the credit of a permanent naval-supply fund to be used under the direction of the Secretary of the Navy in the purchase of ordinary commercial supplies for the naval service, and to be reimbursed from the proper naval appropriations whenever the supplies purchased under said fund are issued for use. * * *

Mar. 3, 1893.
Permanent naval-supply fund.
R. S., secs. 283, 3673, 3676.
June 19, 1878, ch. 312 (1 Supp. R. S., 194); Mar. 2, 1891, ch. 494, par. 1 (1 Supp. R. S., 900).
20 A. G. Op., p. 617.

And section thirty-seven hundred and eighteen of the Revised Statutes of the United States, as amended by the act of July nineteenth, eighteen hundred and ninety-two, is hereby amended so as to read: "twice a week for two weeks or longer, not to exceed four weeks, or once a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy." * * *

Length of time for advertising for supplies.
R. S., sec. 3718.
See vol. 2, Supp. R. S., p. 131.
See notes 12 and 13.

That no contract for the purchase of gun steel or armor for the Navy shall hereafter be made until the subject-matter of the same shall have been submitted to public competition by the Department by advertisement.

Gun steel and armor to be advertised for.
R. S., secs. 3709, 3714, 3718.
See notes 14 and 15.

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*Note 10.*—This appears in the appropriation act (27 Stat. L., 243) as a heading—not a complete sentence—followed by the appropriations for the Bureau for the year.

Form explained.

*Note 11.*—The laws relating to this Bureau are: R. S., sec. 419, Bureau authorized; R. S., sec. 416, employees; R. S., secs. 421, 425, qualification of chief; R. S., secs. 420, 430, 3666, 3676, duties; R. S., secs. 1471, 1472, 1473, 1565, rank and pay of chief; R. S., sec. 1436, former chief exempt from sea duty; 1878, June 19, ch. 312 (1 Supp. R. S., 194), "general account of advances" authorized; 1879, Feb. 14, ch. 68, par. 1 (1 Supp. R. S., 216), "small stores fund" authorized; 1889, Mar. 2, ch. 371 (1 Supp. R. S., 678), accounts to be kept and reports made; 1890, June 30, ch. 640, par. 2 (1 Supp. R. S., 762), clothing and small stores funds consolidated; 1891, Mar. 2, ch. 494, par. 1 (1 Supp. R. S., 900), supplies to be naval and not bureau supplies; 1893, Mar. 3, ch. 212, par. 2, p. 130, "pay, miscellaneous," to be credited with certain receipts.

Laws relating to Bureau.

*Note 12.*—R. S., sec. 3718, provides that materials for the Navy shall be furnished by contract, to be advertised "once a week, for at least four weeks."

By 1890, June 30, ch. 640, par. 3 (1 Supp. R. S., 762), this was changed to "twice a week for at least two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy."

By 1892, July 19, ch. 206 (27 Stat. L., 243, 244), this was changed to "twice a week for two weeks or longer, not to exceed four weeks, or once a week for four weeks, in the discretion of the Secretary of the Navy."

These are all superseded by the provision appearing above.

*Note 13.*—This provision has appeared in the naval appropriation acts of 1891, Mar. 2, ch. 494 (26 Stat. L., 813), and in 1892, July 19, ch. 206 (27 Stat. L., 249).

*Note 14.*—This provision supersedes a similar provision in the appropriation act of 1892, July 19, ch. 206 (27 Stat. L., 236).

*Note 15.*—This provision is repeated from the naval appropriation acts of 1891, Mar. 2, ch. 494 (26 Stat. L., 815), and 1892, July 19, ch. 206 (27 Stat. L., 251).

Guarantee of bid.
Aug. 10, 1846, s. 6, v. 9, p. 101.
No fees are chargeable against the Government for the service of obtaining a certificate of sufficiency of bondsmen. 19 A. G. Op., p. 181. See note 16.

SEC. 3719. Every proposal for naval supplies invited by the Secretary of the Navy, under the preceding section, shall be accompanied by a written guarantee, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of the Navy, give bond, with good and sufficient sureties, to furnish the supplies proposed; and no proposal shall be considered, unless accompanied by such guarantee. If, after the acceptance of a proposal, and a notification thereof to the bidder, he fails to give such bond within the time prescribed by the Secretary of the Navy, the Secretary shall proceed to contract with some other person for furnishing the supplies; and shall forthwith cause the difference between the amount contained in the proposal so guaranteed and the amount for which he may have contracted for furnishing the supplies, for the whole period of the proposal, to be charged up against the bidder and his guarantor; and the same may be immediately recovered by the United States, for the use of the Navy Department, in an action of debt against either or all of such persons.

Record of bid and report to Congress.
Mar. 3, 1843, v. 5, p. 617.

SEC. 3720. All such proposals for naval supplies shall be preserved and recorded, and reported by the Secretary of the Navy to Congress at the commencement of every regular session. The report shall contain a schedule embracing the offers by classes, indicating such as have been accepted. In case of a failure to supply the articles or to perform the work by the person entering into such contract, he and his sureties shall be liable for the forfeiture specified in such contract, as liquidated damages, to be sued for in the name of the United States.

Purchases that may be made without advertising.
See sec. 3718.
Mar. 3, 1845, s. 3, v. 5, p. 794; Mar. 3, 1847, s. 2, v. 9, p. 172; Aug. 3, 1848, s. 11, v. 9, p. 272; Mar. 2, 1865, s. 7, v. 13, p. 467. See sec. 5503 under "Tobacco," same title.
20 A. G. Op., p. 329.
Tobacco to be procured after advertisement. See act of March 3, 1881.

SEC. 3721. The provisions which require that supplies shall be purchased by the Secretary of the Navy from the lowest bidder, after advertisement, shall not apply to ordnance, gunpowder, or medicines, or the supplies which it may be necessary to purchase out of the United States for vessels on foreign stations, or bunting delivered for the use of the Navy, or tobacco, or butter or cheese destined for the use of the Navy, or things contraband of war. Contracts for butter and cheese for the use of the Navy may be made for periods longer than one year, if, in the opinion of the Secretary of the Navy, economy and the quality of the ration will be promoted thereby. The Secretary of the Navy may enter into contracts for tobacco from time to time, as the service requires, for a period not exceeding four years; and in making such contracts he shall not be restricted to the lowest bidder, unless, in his opinion, economy and the best interests of the service will be thereby promoted.

What bids may be rejected.

SEC. 3722. The chief of any Bureau of the Navy Department, in contracting for naval supplies, shall be at liberty to reject the offer of any person who, as principal or surety, has been a defaulter in any previous contract with the

*Note 16.*—This opinion was rendered upon the law requiring the Secretary of the Navy to ascertain the sufficiency of sureties on bonds of pay-officers.

Navy Department. Parties who have made default as principals or sureties in any former contract shall not be received as sureties on other contracts; nor shall the copartners of any firm be received as sureties for such firm or for each other; nor, in contracts with the same Bureau, shall one contractor be received as surety for another. Every contract shall require the delivery of a specified quantity, and no bids having nominal or fictitious prices shall be considered. If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected; and no person shall be received as a contractor who is not a manufacturer of, or regular dealer in, the articles which he offers to supply. All persons offering bids shall have the right to be present when the bids are opened and inspect the same.

Opening bids. Mar. 3, 1863, s. 2, v. 12, p. 828.

SEC. 3723. No chief of a Bureau shall make any contract for supplies for the Navy, to be executed in a foreign country, except it be on first advertising for at least thirty days in two daily newspapers of the city of New York, inviting sealed bids for furnishing the supplies desired; which bids shall be opened in the presence of the Secretary of the Navy and the heads of two Bureaus; and contracts shall in all cases be awarded to the lowest bidder; and paymasters for the Navy on foreign stations shall render, when practicable, with their accounts, an official certificate from the resident consul, or commercial or consular agent of the United States, if there be one, to be furnished gratuitously, vouching that all purchases and expenditures made by the paymasters were made at the ruling market-prices of the place at the time of purchase or expenditure.

Contracts for foreign supplies for the Navy. Mar. 3, 1871, s. 3, v. 16, p. 535.

SEC. 3724. Where articles are advertised and bid for in classes, and in the judgment of the Secretary of the Navy any one or more articles appear to be bid for at excessive or unreasonable prices, exceeding ten per centum above their fair market-value, he shall be authorized to reject such bid.

Rejection of excessive bids. July 4, 1864, s. 7, v. 13, p. 394.

SEC. 3725. All hemp, or preparations of hemp, used for naval purposes by the Government of the United States, shall be of American growth or manufacture, when the same can be obtained of as good quality and at as low a price as foreign hemp.

Hemp. July 14, 1862, s. 11, v. 12, p. 554.

SEC. 3726. The Secretary of the Navy is authorized to procure the preserved meats, pickles, butter, and desiccated vegetables, in such manner and under such restrictions and guarantees as in his opinion will best insure the good quality of said articles.

Preserved meats, etc. July 18, 1861, s. 7, v. 12, p. 265.

SEC. 3727. The Secretary of the Navy is authorized to purchase, in such manner as he shall deem most advantageous to the Government, the flour required for naval use; and to have the bread for the Navy baked from this flour by special contract under naval inspection.

Flour and bread. Mar. 3, 1863, s. 4, v. 12, p. 818.

SEC. 3728. The Secretary of the Navy, in making contracts and purchases of articles for naval purposes, shall give the preference, all other things, including price and quality, being equal, to articles of the growth, production,

Home manufactures to be preferred.

and manufacture of the United States. In purchasing fuel for the Navy, or for naval stations and yards, the Secretary of the Navy shall have power to discriminate and purchase, in such manner as he may deem proper, that kind of fuel which is best adapted to the purpose for which it is to be used.

Fuel. Sept. 28, 1850, s. 1, v. 9, pp. 513, 515.

Bunting. Mar. 2, 1865, s. 7, v. 13, p. 467.

SEC. 3729. The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury may enter into contract, in open market, for bunting of American manufacture, as their respective services require, for a period not exceeding one year, and at a price not exceeding that at which an article of equal quality can be imported.

Relinquishment of reservations on deliveries. June 17, 1844, s. 5, v. 5, p. 703. See notes 17 and 18.

SEC. 3730. The Secretary of the Navy may relinquish and pay all reservations of the ten per centum upon deliveries made under contracts with the Navy Department, where these reservations have arisen and the contracts have been afterward extended, or where the contracts have been completed after the time of delivery, by and with the consent of the Department, or where the contracts have been dissolved by the like consent, or have been terminated, or an extension thereof has been prevented by operation of law, where no injury has been sustained by the public service.

Name of contractor to appear on supplies. July 17, 1862, s. 15, v. 12, p. 596.

SEC. 3731. Every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same with the name of the contractor furnishing such supplies, in such manner as the Secretary of War and the Secretary of the Navy may, respectively, direct; and no supplies of any kind shall be received, unless so marked and distinguished.

Unauthorized contracts prohibited. March 2, 1861, s. 10, v. 12, p. 220. See note 19.

SEC. 3732. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

No contract to exceed appropriation. July 25, 1868, s. 3, v. 15, p. 177.

SEC. 3733. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the govern-

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See sec. 3730.

*Note 17.*—Where a contractor failed to compete, and other parties did it on much less terms, *held* that, the United States having sustained no loss, the original contractor was entitled to the 10 per cent. reservation, but not to the profits he would have made, nor to the difference between the contract price and that which others were paid. [Some special provisions were in this contract.] (Otto, 99, p. 30.)

*Note 18.*—In a failure to fulfill, neither the head of the Department nor the accounting officers can pay the reservations. They have no authority to adjust claims for damages under contracts. Congress alone can afford relief. (Op., II, 481; IV, 327; VI, 516.) Claim for unliquidated damages, breach of contract, can not be entertained by the accounting officers. (Op., XIV, p. 24.)

Contract fully performed and no damage whatever sustained by Government, per diem forfeiture not warranted. (Op., XV, p. 420.)

The head of a Department may waive a forfeiture in a case of good faith where the forfeiture occurred through misfortune. "The officers of the Government are not bound, from the nature of our institutions, to perpetrate an act of injustice in the name of the United States. (Op., II, p. 485.)" (Op., XII, p. 112.)

See sec. 3732.

*Note 19.*—Contracts for clothing, subsistence, forage, fuel, quarters, and transportation may be made, though there is no appropriation adequate to the fulfillment of the contract or purchase, not to exceed the necessities of the current year. (Op., XV, 124 and 209. See also Op., VI, 27.)

ment to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.

See sec. 5503. Same title.

SEC. 3734. Before any new buildings for the use of the United States are commenced, the plans and full estimates therefor shall be prepared and approved by the Secretary of the Treasury, the Postmaster-General, and the Secretary of the Interior; and the cost of each building shall not exceed the amount of such estimate.

Restrictions on commencement of new buildings. July 15, 1870, v. 16, p. 296. See sec. 3663 appropriations, Part III.

That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in such contract; and any person or persons making application therefor, and furnishing affidavit to the Department under the direction of which said work is being, or has been, prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made shall be furnished with a certified copy of said contract and bond, upon which said person or persons supplying such labor and materials shall have a right of action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties and to prosecute the same to final judgment and execution: *Provided*, That such action and its prosecution shall involve the United States in no expense.

28 Stat. L., p. 278. Contractors on public works. Penal bond to include security for labor and materials. Action on bond for labor or materials furnished. *Proviso.* Expense.

SEC. 2. Provided that in such case the court in which such action is brought is authorized to require proper security for costs in case judgment is for the defendant.

Costs.

SEC. 3735. It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.

Contracts limited to one year. Jan. 31, 1868, Res., v. 15, p. 246; Mar. 24, 1874, Res., v. 18, p. 286 [modifying as to certain articles under Post-Office Department]. See note 20.

SEC. 3736. No land shall be purchased on account of the United States, except under a law authorizing such purchase.

Restriction on purchases of land. May 1, 1820, s. 7, v. 3, p. 568. See Public Property and Buildings, Division III.

SEC. 3737. No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order trans-

No transfer of contracts. July 17, 1862, s. 14, v. 12, p. 596.

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*Note 20.*—The head of a Department is the competent judge of the matters of fact involved in the acceptance or rejection of any of the proposals for stationery. (Op., VI, p. 226.)

See sec. 3735.

See notes 21, 22, and 23.

ferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

Eight hours to be a day's work. June 25, 1868, v. 15, p. 77. See S. C., 94, 400; Op., XII, 530; XIII, 29, 424; XIV, 37, 45, 128; XVI, 58. 1882. See sec. 3689, under Appropriations; 19 A. G. Op., p. 685. See note 24.

SEC. 3738. Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the Government of the United States.

Aug. 1, 1892.

This act was published as a part of General Order, No. 398, Aug. 6, 1892, by Acting Secretary James R. Soley.

That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.

SEC. 2. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

SEC. 3. The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act.

Title 48.

Members of Congress not to be interested in contracts.

SEC. 3739. No member of or delegate to Congress shall directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any

See sec. 3737.

*Note 21.*—This section (3737) is intended simply for the benefit of the United States, which is not compelled to avail itself of a transfer by the contractor, but may recognize the same and accept and pay the assignee. (Ops., XVI, p. 278; XV, p. 236.)

*Note 22.*—Contracts of a personal nature, importing high trust and confidence in contractors, can not be assigned or transferred without the consent of the Department. (Op., X, p. 5.)

*Note 23.*—An assignment of contract, under act of July 17, 1862, is void, and passes no title, legal or equitable. An assignment of a claim for money due under a contract passes title to the money due, as though it were the sale of a chattel. (C. C., IX, p. 156; see also C. C., V, 504.)

*Note 24.*—See later act of August 1, 1892.

contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same, when demanded, by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.

April 21, 1808, s. 1, v. 2, p. 484. See note 25.

SEC. 3740. Nothing contained in the preceding section shall extend, or be construed to extend, to any contract or agreement, made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any member of or delegate to Congress, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement.

What interest members of Congress may have. Apr. 21, 1808, s. 2, v. 2, p. 484; Feb. 27, 1877, v. 19, p. 249.

SEC. 3741. In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of or delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.

Stipulation that no member of Congress has an interest. Apr. 21, 1808, s. 3, v. 2, p. 484; Feb. 27, 1877, v. 19, p. 249.

That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required before commencing such work to execute the usual penal (26) bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them (27) labor and materials in the prosecution of the work provided for in such contract;

August 13, 1894. 24 Stat. L., 278, Supp. vol. 2, p. 236. Public building or works. Contractors to furnish bond to pay for labor and materials. R. S., s. 3709. Aug. 1, 1892, ch. 352, *ante*, p. 62. If labor or materials furnished are not paid for.

and any person or persons making application therefor, and furnishing affidavit to the Department under the direction of which said work is being, or has been, prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, shall be furnished with a certified copy of said contract and bond,

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*Note 25.*—There is no law preventing Government officers, Executive branch, contracting with the Government in matters separate from their offices and in no way connected with the performance of their official duties, nor against their acquiring an interest in contracts after they are procured. (Op., XIV, 483.) See sec. 3739.

*Note 26.*—See act allowing corporate bonds, 1894, Aug. 13, ch. 282.

*Note 27.*—For review of "labor legislation," see note (1) to 1888, June 13, ch. 389 (1 Supp. R. S., 590), and 1892, Aug. 1, ch. 352.

—person supplying may sue on bond.

upon which said person or persons supplying such labor and materials shall have a right of action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties and to prosecute the same to final judgment and execution:

No expense to United States.

*Provided*, That such action and its prosecutions shall involve the United States in no expense.

Security for costs.
August 13, 1894.

SEC. 2. Provided that in such case the court in which such action is brought is authorized to require proper security for costs in case judgment is for the defendant.

Penalty against officer for making contract with a member of Congress.
Apr. 21, 1808, s. 4, v. 2, p. 484; Feb. 27, 1877, v. 19, p. 249.

SEC. 3742. Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain, or agreement in writing or otherwise, other than such as are hereinbefore excepted, with any member of or delegate to Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars.

Title 43.

Deposit of contracts.
July 16, 1798, s. 6, v. 1, p. 610; Feb. 27, 1877, v. 19, p. 249.
See note 28.

SEC. 3743. All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts shall be deposited in the office of the First Comptroller of the Treasury of the United States, the Second Comptroller of the Treasury of the United States, or the Commissioner of Customs, respectively, according to the nature thereof, within ninety days after their respective dates.

Contracts to be in writing.
June 2, 1862, s. 1, v. 12, p. 411.
See notes 29 and 30.

SEC. 3744. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return.

Oath to contract.
Ibid., s. 2.

SEC. 3745. It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a con-

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*Note 28.*—Naval contracts are now deposited with the Auditor for the Navy Department under act of 1894, which act abolished the office of Second Comptroller.

See sec. 3744.

*Note 29.*—The requirement in section 3744, "to be reduced to writing and signed by the contracting parties," is mandatory and obligatory on contractors and officers. Oral agreement void as an executory contract. (C. C., IV, p. 75, and V, pp. 65, 338.)

*Note 30.*—This section is not infringed by the proper officer having charge of such matter accepting delivery of supplies after the day stipulated, nor is a verbal agreement to extend the time of performance invalid. (Wallace, XIX, p. 17; C. C., IX, 54.) When an "emergency" is declared, need not be in writing. (C. C., IX, 187 and 291.)

tract made by me personally with ———; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided."

Penalty for omitting returns. Ibid., s. 3.

SEC. 3746. Every officer who makes any contract, and fails or neglects to make return of the same, according to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months.

Instructions. Ibid., s. 5.

SEC. 3747. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to furnish every officer appointed by them with authority to make contracts on behalf of the Government with a printed letter of instructions, setting forth the duties of such officer, under the two preceding sections, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible.

Title 11, chap. 8.

Returns Office.

SEC. 512. The Secretary of the Interior shall from time to time provide a proper apartment, to be called the Returns Office, in which he shall caused to be filed the returns of contracts made by the Secretary of War, the Secretary of the Navy, and the Secretary of the Interior, and shall appoint a clerk of the first class to attend to the same.

Clerk to file returns.

SEC. 513. The clerk of the Returns Office shall file all returns made to the Office, so that the same may be of easy access, keeping all returns made by the same officer in the same place, and numbering them in the order in which they are made.

Index book.

SEC. 514. The clerk of the Returns Office shall provide and keep an index-book, with the names of the contracting parties, and the number of each contract opposite to the names; and shall submit the index-book and returns to any person desiring to inspect it.

Copies of returns. June 2, 1862, ss. 2, 4, v. 12, p. 412.

SEC. 515. The clerk of the Returns Office shall furnish copies of such returns to any person paying therefor at the rate of five cents for every one hundred words, to which copies certificates shall be appended in every case by the clerk making the same, attesting their correctness, and that each copy so certified is a full and complete copy of the return.

Title 70, chap. 6.

Contracting beyond specific appropriation. July 25, 1868, s. 3, v. 15, p. 177. See secs. 3733, 3734, same title.

SEC. 5503. Every officer of the Government who knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be punished by imprisonment not less than six months nor more than two years, and shall pay a fine of two thousand dollars.

Mar. 3, 1877.

Contract for rent of buildings in the District of Columbia.

June 22, 1874, v. 18, p. 133; Mar. 3, 1877, v. 19, p. 370.

Hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building.

June 15, 1880.

Rent of buildings.

June 15, 1880, 21 Stat. L., p. 228; Aug. 5, 1882, 22 Stat. L., 241.

And where buildings are rented for public use in the District of Columbia, the Executive Departments are authorized, whenever it shall be advantageous to the public interests, to rent others in their stead: *Provided*, That no increase in the number of buildings now in use, nor in the amounts paid for rents, shall result therefrom.

August 5, 1882.

22 Stat. at L., p. 522.

"* * *; and it shall be the duty of the heads of the several executive departments to submit to Congress each year, in the annual estimates of appropriations, a statement of the number of buildings rented by their respective departments, the purposes for which rented, and the annual rental of each."

June 14, 1878.

Materials for steam boilers.

Notice to dealers.

Tests.

June 14, 1878, v. 20, p. 253.

That the Secretary of the Navy be, and he is hereby, authorized to purchase, at the lowest market price, such plate iron and other material as may enter into the construction of steam boilers for the Navy without advertising for bids to furnish the same: *Provided*, That he shall cause to be sent to the principal dealers and manufacturers of iron and such other materials as may be required, specifications of the quality, description, and character of such iron and materials so required: *And provided further*, That such plate iron and materials shall be subjected to the same tests and inspection as now provided for, and which inspection and tests shall be made publicly and in presence of such bidders or their authorized agents as may choose to attend at the making thereof.

Mar. 3, 1881.

21 Stat. L., 509. Supp. R. S., p. 226-7.

Tobacco, how purchased.

Mar. 3, 1881, v. 21, p. 509.

That the Secretary of the Navy be, and he is hereby, directed to cause all purchases of tobacco for the use of the Navy to be made in the city of Washington, and as follows:

In the month of February or March of each year the Secretary of the Navy shall cause proposals for bids for supplying the Navy with tobacco during the next year to be advertised thirty days in one daily newspaper in each of the cities of New York, Harrisburg, Pennsylvania, Baltimore, Richmond, Raleigh, North Carolina, Saint Louis, Louisville, Nashville, Hartford, Connecticut, Detroit, Cairo, Illinois, and Chicago; said tobacco to be manufactured during the months of June, July, August, and September; the bids to be accompanied by samples of the tobacco which each bidder may propose to furnish. The lowest bid for furnishing tobacco equal to the United States Navy standard now in use shall be accepted.

Supp. R. S., v. 2, p. 517.

Tobacco; advertisement.

R. S., s. 3721.

And the Secretary of the Navy is hereby authorized and directed to cause advertisement to be made for tobacco for the use of the Navy, as the needs of the service may require, in the manner prescribed by law for other supplies.

—samples.

Bidders shall submit with their proposals a sample of the tobacco which they propose to furnish,

and the contract shall, in the discretion of the Department, be awarded to the bidder whose sample is found by a board of officers to be best adapted for use in the Navy. * *

—contract.

That the Secretary of the Navy be authorized and directed to introduce into the naval service rope and cordage manufactured of cotton according to the recent methods to such an extent as will furnish a fair test of the value and efficiency thereof as compared with the kinds now in use: *Provided, however*, That no person shall have any claim whatever against the United States or any department thereof or receive any compensation therefor.

June 10, 1880.

Cotton cordage for the Navy.

June 10, 1880, v. 21, p. 172.

The Secretary of the Navy is authorized and empowered, within his discretion, to constitute and introduce, as a portion of the equipment of the Navy, the life-saving dress adopted and approved by the Life Saving Service of the United States.

Mar. 3, 1883.

Life-saving dress.

Mar. 3, 1883, ch. 97, 22 Stat. L., p. 475. [Naval appropriation act.]

For the purchase and manufacture, after full investigation and test in the United States under the direction of the Secretary of the Navy, of torpedoes adapted to naval warfare, or of the right to manufacture the same and for the fixtures and machinery necessary for operating the same, one hundred thousand dollars: *Provided*, That no part of said money shall be expended for the purchase or manufacture of any torpedo or of the right to manufacture the same until the same shall have been approved by the Secretary of the Navy, after a favorable report to be made to him by a board of naval officers to be created by him to examine and test said torpedoes and inventions.

Torpedoes.

Idem.

From and after the first day of April, eighteen hundred and seventy-nine, the value of issues of small stores shall be credited to a fund to be designated as the "small stores fund", in the same manner as the value of the issues of clothing is now credited to the "clothing fund"; the resources of the fund to be used hereafter in the purchase of supplies of small stores for issue. * * *

Feb. 14, 1879.

Small stores fund.

Feb. 14, 1879, v. 20, p. 288.

Bureau of provisions and clothing. * * * And the clothing fund and small stores fund shall be hereafter consolidated and administered as a fund to be known as the clothing and small stores fund. * * *

Act of June 30, 1890.

Clothing and small stores funds to be consolidated.

Feb. 14, 1879, ch. 68.

Title 43.

SEC. 3711. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made. The person so appointed shall, before entering upon the duty of inspector, weigher, and measurer, and to the satisfaction of the appointing officer, give bond, with not less than two sureties, in the penal sum of five thousand dollars, and with condition that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of

Inspection of fuel in District of Columbia.

Appointment of inspectors, etc.

July 11, 1870, s. 1, v. 16, p. 229.

the standard measure of one hundred and twenty-eight cubic feet. The inspector, weigher, and measurer so appointed shall be entitled to receive from the venders of fuel weighed and measured by him twenty cents for each ton of coal weighed, and nine cents for each cord of wood measured by him. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel.

Accounting officer to be notified. Ibid., s. 2.

SEC. 3712. The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section.

No payment without certificate. Ibid.

SEC. 3713. It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood, unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer.

Mar. 2, 1895. Chapter 179, ss. 12-14.

SEC. 3711. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person, to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service:

Coal and wood to be weighed, etc.

Appointment of employees.

Exception for Navy Department.

*Provided*, That the weigher and measurer of the Navy Department may be appointed outside of said Department, and that such weigher and measurer shall give bond and be paid as heretofore provided by law.

Duties

The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet.

Certificate.

Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel.

## DESERTERS AND DESERTION.

Sec.
1420. Deserters not to be enlisted.
1553. Enticing persons to desert.
1624. Punishment for desertion, enlisting deserters, etc.
1996. Citizenship forfeited.
1997. When not to be held as a deserter.
1998. Avoiding draft.
4749. Certain soldiers and sailors not to be deemed deserters.
5455. Enticing desertion, harboring deserters.

Title 15, chap. 1.

Deserters not to be enlisted. Mar. 3, 1865, s. 18, v. 13, p. 490.

SEC. 1420. No * * * deserter from the naval or military service of the United States shall be enlisted in the naval service.

SEC. 1553. Any person who shall entice or procure, or attempt to entice or procure, any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or who shall in anywise aid or assist any such seaman or other person in deserting, or in attempting to desert from such service, or who shall harbor, conceal, protect, or in anywise assist any such seaman or other person who may have deserted from said service, knowing him to have deserted therefrom, or who shall refuse to give up and deliver such person on the demand of an officer authorized to receive him, shall be punished by imprisonment for not less than six months nor more than three years, and by fine of not more than two thousand dollars, to be enforced in any court of the United States having jurisdiction.

Title 15, chap. 7.

Enticing persons to desert. July 1, 1864, v. 13, p. 343.

SEC. 1624. * * *

Title 15, chap. 10.

ART. 4. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

Offenses punishable by death.

who * * *

Sixth. * * * , in time of war, deserts or entices others to desert;

Desertion in time of war. See two provisions under act of Aug. 14, 1888.

Seventh. * * * , in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

Deserting trust. July 17, 1862, s. 1, v. 12, p. 600; Apr. 23, 1800, art. 17, v. 2, p. 47.

ART. 8. Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy—

who * * *

Twenty-first. * * * in time of peace, deserts or attempts to desert, or aids and entices others to desert;

Desertion in time of peace.

Twenty-second. Or receives or entertains any deserter from any other vessel of the Navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander-in-chief, or to the commander of the squadron.

Harboring deserters. July 17, 1862, s. 1, v. 12, p. 600; Apr. 23, 1800, v. 2, p. 47.

ART. 9. Any officer who absents himself from his command without leave, may, by the sentence of a court-martial, be reduced to the rating of an ordinary seaman.

Officers absent without leave. May 16, 1864, s. 2, v. 13, p. 75.

ART. 10. Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

Desertion by resignation. Aug. 5, 1861, s. 2, v. 12, p. 316. See Title "Dismissal and resignation of officers," sec. 1624, art. 10.

ART. 19. Any officer who knowingly enlists into the naval service any deserter from the naval or military service of the United States * * * shall be punished as a court-martial may direct.

Enlisting deserters. Mar. 3, 1865, s. 18, v. 13, p. 490; May 12, 1879, v. 21, p. 3.

SEC. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President,

Title 25.

Rights as citizens forfeited for desertion, etc.

Mar. 3, 1865, s. 21, v. 13, p. 490.

dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

Certain soldiers and sailors not to incur the forfeitures of the last section.
July 19, 1867, v. 15, p. 14.
See sec. 4749.

SEC. 1997. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Avoiding the draft.
Mar. 3, 1865, s. 21, v. 13, p. 490.

SEC. 1998. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.

Title 57.

Certain soldiers and sailors not to be deemed deserters, etc.
July 19, 1867, v. 15, p. 14.
See sec. 2438, Bounty Land, Division, IV.

SEC. 4749. No soldier or sailor shall be taken or held to be a deserter from the Army or Navy who faithfully served according to his enlistment until the nineteenth day of April, eighteen hundred and sixty-five, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date; but nothing herein contained shall operate as a remission of any forfeiture incurred by any such soldier or sailor of his pension; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred by the loss of his citizenship in consequence of his desertion.

Title 70, chap. 5.

Enticing desertions from the military or naval service.
Mar. 3, 1863, s. 24, v. 12, p. 735; July 1, 1864, v. 13, p. 343; Feb. 27, 1877, v. 19, p. 253.
See note 1.

SEC. 5455. Every person who entices or procures, or attempts or endeavors to entice or procure, any soldier in the military service of the United States, or who has been recruited for such service, to desert therefrom, or who aids any such soldier in deserting or attempting to desert from such service, or who harbors, conceals, protects, or assists any such soldier who may have deserted from such service, knowing him to have deserted therefrom, or who refuses

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*Note 1.*—The President may grant conditional pardon for desertion; may remit a part of the penalty or punishment without remitting the whole; may reenfranchise without giving right to forfeited pay. (Op., XIV, 124.)

See sec. 5455.

If pay forfeited or a fine has passed into the Treasury, by a covering warrant or otherwise, neither can be released without authority of Congress. (Op., VIII, 281; XIV, 599; and XVI, 1.)

Desertion is a continuing offense. Limitation to trial begins to run from commencement of the offense, except where, by reason of "manifest impediment," the accused is not amenable to justice within two years from that time. In such a case it runs from the removal of the impediment. Continuing commission limited by the obligation to serve under engagement. When that ceases the commission terminates in cases not excepted. "Amenable" signifies within the reach and power of the military authorities to bring to trial. (Op., XV, p. 152, Taft, Sept. 1, 1876.)

Where forfeiture or loss of pay is made part of a sentence, in addition to confinement or suspension from duty, the former may be remitted by the proper authority, in whole or in part, without also remitting the latter. (Op., XV, p. 175, Taft, Nov. 9, 1876.)

Forfeiture by desertion does not include money of the deserter found in possession of or deposited with paymaster. (Op., XIII, p. 210, Hoar, Feb. 8, 1870.)

The honorable discharge of a soldier is a formal, final judgment passed by the

to give up and deliver such soldier on the demand of any officer authorized to receive him, shall be punished by imprisonment not less than six months nor more than two years, and by a fine not exceeding five hundred dollars; and every person who entices or procures, or attempts or endeavors to entice or procure, any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or who aids any such seaman or other person in deserting or in attempting to desert from such service, or who harbors, conceals, protects, or assists any such seaman or other person who may have deserted from such service, knowing him to have deserted therefrom, or who refuses to give up and deliver such sailor or other person on the demand of any officer authorized to receive him, shall be punished by imprisonment not less than six months nor more than three years, and by a fine of not more than two thousand dollars, to be enforced in any court of the United States having jurisdiction.

## DISMISSAL AND RESIGNATION OF OFFICERS.

Sec.
1229. Dismissal in time of peace.
1441. Officers dismissed or resigning to escape dismissal.
1624. Dismissal of officers. (Art. 36.)
1624. Officers dismissed by President may demand trial. (Art. 37.)
Act amending article 37.
Failing in examination.

SEC. 1229. * * * No * * * officer in the military, or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof.

Title 14, chap. 1.

July 15, 1870, s. 17, v. 16, p. 319; July 13, 1866, s. 5, v. 14, p. 92.

[Section 1230 of the Revised Statutes is almost the same as art. 37, sec. 1624, except the words "since 3d March, 1865," are omitted.]

SEC. 1441. No officer of the Navy who has been dismissed by the sentence of a court-martial, or suffered to resign in order to escape such dismissal, shall ever again become an officer of the Navy.

Title 15, chap. 2.

Officers dismissed, or resigning to escape dismissal.

July 16, 1862, s. 11, v. 12, p. 585.

See notes 1, 2, 3.

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Government on his entire military record, and an authoritative declaration that he left the service in a status of honor. As such it relieves him from a charge of desertion appearing on the rolls. Does not restore pay and allowances forfeited by sentence of a military court-martial for desertion. (Court of Claims, VIII, 110; IX, 190, Wallace, XV, 34.

See articles 61 and 62 for the government of the Navy, p. 21.

A seaman charged before a court-martial with desertion may be found guilty of attempting to desert. (Howard, 20, p. 65.)

In a trial for theft and desertion, sentence and conviction disapproved and prisoner restored to duty. Action of reviewing officer in effect an acquittal by the court. No authority to withhold pay on account of alleged desertion. (Op., XIII, p. 459, Bristow, June 21, 1871.)

*Note 1.*—Congress did not intend by this clause to preclude the President from reappointing officers dismissed by sentence of court-martial to whom he has extended a pardon. Pardon purges the offense, but does not of itself restore lost position. (Op. XI, p. 19, Mar. 12, 1864.)

*Note 2.*—Where an act directed the Secretary of War to amend the record of an officer dismissed by court-martial, so that he should appear on the rolls and records as if he had been continuously in the service: *Held*, that it conferred on the President the power to appoint in the usual way. If so appointed, the commission should refer to the act, in a proper manner, under which the appointment was made, by nomination and confirmation of the Senate.—Op. XIV, 448, Williams, Aug. 13, 1874; but see Court of Claims, XIV, 573; XV, 22.

See sec. 1441.

*Note 3.*—Congress, as a general rule, has authorized the President to restore officers to the retired list without requiring the advice and consent of the Senate. Where they have been reinstated to form a part of the *active force* of the Army, a different phraseology has been employed—requiring the advice and consent of the Senate. An officer dismissed by sentence of a court-martial can not, under section

See sec. 1441.

Title 15, chap. 10.

Dismissal of officers.
July 13, 1866, s. 5, v. 14, p. 92.
See title "Deserters and desertion" for amendments to this section.

SEC. 1624, ART. 36. No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof.

Officer dismissed by the President may demand trial.
Mar. 3, 1865, s. 12, v. 13, p. 489.
See act of June 22, 1874, and notes *infra*.

SEC. 1624, ART. 37. When any officer, dismissed by order of the President since 3d March, 1865, makes, in writing, an application for trial, setting forth, under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And if such court-martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.

June 22, 1874.

Pay on restoration.
June 22, 1874, s. 2, v. 18, p. 191.
See note 4.

That the accounting officers of the Treasury be, and are hereby, prohibited from making any allowance to any officer of the Navy who has been, or may hereafter be, dismissed from the service and restored to the same under the provisions of the twelfth section of the act of March third, eighteen hundred and sixty-five, entitled, "An act to amend the several acts heretofore passed to provide for the enrolling and calling out the national forces, and for other purposes," [sec. 1624, R. S.] to exceed more than pay as on leave for six months from the date of dismissal, unless it shall appear that the officer demanded in writing, addressed to the Secretary of the Navy, and continued to demand as often as once in six months, a trial as provided for in said act.

Aug. 5, 1882.

Officers failing in examination.
Aug. 5, 1882, 22 Stat. L., p. 286. [Naval appropriation act.]
See note 5.

Whenever on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and

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1228 R. S., be reinstated except by reappointment, confirmed by the Senate. This is a clear recognition that restoration of officers separated from the service under other circumstances, can be accomplished without confirmation of the Senate. The words "inferior officers" used in the Constitution, mean subordinate or inferior officers in whom, respectively, the power of appointment may be invested by Congress in the President, the courts of law, and the heads of Departments.—C. C., XIV, 573, Collin's Case. See sec. 1594, Retirement.

When the President is authorized by law to reinstate a discharged Army officer, he may do so without the advice and consent of the Senate. When he exercises the discretion vested in him by an act of Congress, of reinstating an officer, and expresses his will by an order to that effect, the officer acquires a vested right to the office. By antedating an appointment or commission he can not create a liability on the part of the Government, but the legislative branch of the Government can.—C. C., XV, 22, Collin's Case.

*Note 4.*—An officer, between date of dismissal and restoration, not demanding, in writing, as often as six months, a trial, when restored is not entitled to more than "pay as on leave for six months" from date of dismissal. (Op., XV, 569, Taft, July 21, 1876.)

See act of Aug. 5, 1882.

*Note 5.*—After a sentence of dismissal from the service has been approved and carried into execution, the President can not reconsider his approval and revoke the sentence. (Op., IV, p. 274, Nov. 3, 1843; Op., VII, p. 99, Apr. 11, 1855; Op., X, p. 64, June 13, 1861; Op., XI, pp. 19 and 251, Mar. 12, 1864, and June 20, 1865, respectively; Op. XV, p. 291, and Feb. 24, 1881.)

The President, by and with the advice and consent of the Senate, can supersede

heard upon the charges against him, he shall not be placed on the retired-list of the Navy, and if the finding of the board be approved by the President, he shall be discharged with not more than one year's pay. [One year's *leave* pay, as decided by the accounting officers in 1882.]

Title 15, chap. 10.

Desertion by resignation.

SEC. 1624, ART. 10. Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

Aug. 5, 1861, s. 2, v. 12, p. 316. See note 6. See title "Deserters and desertion" for amendments to this section.

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a military or naval officer by the nomination of a successor. The confirmation and appointment of the latter vacates the office of the former. (Blake's Case, Supreme Court, Otto, 103, p. 227; also see Otto, 97, p. 426, Mimmack's Case, and Otto, 102, 426, McElrath's Case.)

So much of this section (1624) as relates to dismissal in time of peace did not take effect before August 20, 1866, on which day, in contemplation of law, the rebellion against the national authority was suppressed. (S. C., Otto, 102, p. 426.)

Not the effect of this act (sec. 1624) to withdraw the power of the President to supersede an officer by appointment, by and with the advice and consent of the Senate, of another. (Otto, 103, p. 226.)

Article 37, section 1624 (12 of act of Mar. 3, 1865, 13 Stat., 489), is constitutional and imperative. It provides, in certain contingencies, for the restoration of the officer to the service, and leaves the dismissal in full force if those contingencies do not happen. (Op., XII, p. 4, Stanbery, Aug. 6, 1866.)

The President in 1861 had the power to dismiss an officer from the Marine Corps. (Tyler's Case, Op., XV, p. 421, Jan. 8, 1878.)

Dismissal of an acting master, March, 1862, by the Secretary of the Navy, lawful. In the absence of legislation, the Secretary had a right to determine at what time an acting appointment should cease. (A. M. Smith's Case, Op., XV, p. 560, Apr. 25, 1876.)

The Secretary of the Navy had the power to dismiss an "acting gunner on temporary service" in the volunteer Navy. The power to appoint gunners to an undefined extent does not preclude the appointment of acting gunners also. (Soper's Case, Op., XV, p. 564, June 10, 1876.)

The seventeenth section of the act of July 12, 1862, chap. 200, v. 12, p. 594, authorized and requested the President to dismiss and discharge from the military service, either in the Army, Navy, Marine Corps, or volunteer force in the United States service, any officer for any cause which, in his judgment, either rendered such officer unsuitable for, or whose dismission would promote, the public service. This section was repealed by section 5 of an act approved July 13, 1866, chap. 176, v. 14, p. 90.

In a case where an officer was dismissed by the President, and the dismissal revoked in due form, no unreasonable time having elapsed, the vacancy not having been filled, and the rights of other parties not having intervened, the revocation presents only a case of Executive authority, which has repeatedly been exercised; but in view of late decisions the court gave judgment for the claimant in order that the case might go to the Supreme Court. (C. C., XVII, p. 344, Corson's Case, Dec., 1881, term.)

The President, by and with the advice and consent of the Senate, may, by reappointment and commission, restore lost rank, including seniority, to an officer of the Army or Navy. Cases cited. (Op. VIII, 223 Cushing, Dec. 10, 1856.)

In the same way he can correct the date of a military appointment, or an error in the date of appointment, or an inadvertence to nominate an officer entitled to promotion by ten years' service. (Op. III, 307; VIII, 223.)

The right of a reinstated officer to pay during the time he was out of the service must depend on the will of Congress, as expressed in the act authorizing his reinstatement, and not upon the date of his commission. (C. C., XV, 41, Kilburn's Case.)

Commissions signed by his predecessor should be regarded by the President as conclusive evidence of the officers' right to the rank and authority given thereby. While their commissions stand the President should respect them, and in making promotions by seniority have regard for them. If wrong has been sustained, Congress can remedy it by a special relief act empowering the President. (Op. XVI, 583, Devens, Dec. 9, 1880.)

*Note 6.*—An offer to resign is revocable by the officer prior to its acceptance. After acceptance and before it has taken effect it may be modified or withdrawn entirely by the consent of both parties. Control over it, in point of duration, extends no further. (Op., XIV, p. 260, June 17, 1873; Op., XII, p. 555, Feb. 10, 1869.)

A resignation tendered to take effect on a future day, and placed in the hands of a party to be delivered to the President, can be recalled before delivery. Its subsequent delivery is not binding. (Op., XIII, p. 77, June 2, 1869.) See sec. 1624.

A valid resignation of a military officer, followed by an unconditional acceptance of it, operates to remove the incumbent, and a new appointment is required to restore him to the office. (Op., XII, p. 555, Feb. 10, 1869.) But in cases where the officer was insane at time of resignation, his action was held to be a nullity and capable of being rectified. (Ops., III, p. 641, VI, p. 456, and X, p. 229.) If the vacancy has been properly filled, the acceptance can not be legally revoked. (Op., XV, p. 469, Mar. 22, 1878; Otto, 103, p. 227.)

A civil officer has a right to resign at his own pleasure, and it is only necessary

## ENGINEER CORPS.

[See also NAVAL ACADEMY.]

Sec.
424. Chief of Bureau.
1390. Engineer Corps, number and rank. Restriction on promotions.
1391. Appointment of.
1392. Qualifications of.
1393. Engineer of the fleet.
1471. Rank and title of Chief of Bureau.
1476. Rank, active list.
1481. Rank, retired, etc.
1484. Engineer officers graduated at the Academy.
1488. No authority to exercise military command.
1556. Pay of engineers. Assignment to colleges.

Title 10.

Chief of Bureau. July 5, 1862, s. 1, v. 12, p. 510.

SEC. 424. The Chief of the Bureau of Steam Engineering shall be appointed from the chief engineers of the Navy, and shall be a skillful engineer.

Title 15, chap. 1.

Engineer Corps, number and rank. Mar. 3, 1871, s. 7, v. 16, p. 536; Feb. 24, 1874, v. 18, p. 17; Aug. 5, 1882. 22 Stat. L., p. 286. See sec. 1476. 20 A. G. Op., p. 358.

SEC. 1390. The active list of the Engineer Corps of the Navy shall consist of seventy chief engineers, who shall be divided into three grades, by relative rank, as provided in Chapter Four of this Title;

Ten chief engineers;

Fifteen chief engineers; and

Forty-five chief engineers, who shall have the relative rank of lieutenant-commander or lieutenant.

And each and all of the above-named officers of the Engineer Corps shall have the pay of chief engineers of the Navy, as now provided.

Lieutenant of the junior grade. Mar. 3, 1883, 1 Supp. R. S., p. 401. See note 1.

*Sixty* passed assistant engineers, who shall have the relative rank of lieutenant or master; and

*Forty* assistant engineers, who shall have the relative rank of master or ensign; and the said assistant engineers shall have the pay of *passed* and *assistant* engineers of the Navy, respectively, as now provided.

August 5, 1882.

Sec. 1390. Engineer Corps, number of officers. R. S., sec. 1390. Mar. 2, 1889, ch. 396.

That the active-list of the engineer corps of the Navy shall hereafter consist of ten chief engineers with the relative rank of captain, fifteen chief engineers with the relative rank of commander, forty-five chief engineers with the relative rank of lieutenant-commander or lieutenant, sixty passed assistant engineers, and forty assistant engineers, with the relative rank for each as now fixed by law;

Number not to be exceeded. Mar. 3, 1883, ch. 97, par. 3, vol. 22, Stat. L., 1 Supp. R. S., p. 401.

And after the number of officers in the said grades shall be reduced as above provided, the number in each grade shall not exceed the reduced number which is fixed by the provisions of this act for the several grades.

No officer reduced or dropped.

That no officer now in the service shall be reduced in rank or deprived of his commission by reason of any provision of this act reducing the number of officers in the several staff corps:

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that it should be received by the Executive. Its acceptance or rejection by him is unimportant. (U. S. *v.* Wright, 1 McLean, 509.)

A resignation does not become operative until the officer is officially notified of the acceptance of the same. Mere acceptance, without notice, does not give effect to the resignation. It is not until due notice of the same is received that the officer is legally separated from the Army and made a civilian, and up to the date of such notice he is entitled to pay. (Winthrop's Digest, p. 430.)

*Note 1.*—The titles of first and second assistant engineers were changed to passed and assistant engineers, respectively, February 24, 1874. The grade of third assistant was abolished July 15, 1870.

SEC. 1391. Engineers shall be appointed by the President, by and with the advice and consent of the Senate.

Title 15, chap. 1.

Appointment. Aug. 31, 1842, s. 6, v. 5, p. 577; Mar. 3, 1845, s. 7, v. 5, p. 794; July 25, 1866, s. 7, v. 14, p. 223.

SEC. 1392. No person under nineteen or over twenty-six years of age shall be appointed an *assistant* engineer in the Navy; nor shall any person be appointed or promoted in the Engineer Corps until after he has been found qualified by a board of competent engineers and medical officers designated by the Secretary of the Navy, and has complied with the existing regulations.

Qualifications. Mar. 3, 1871, s. 8, v. 16, p. 536; Feb. 24, 1874, v. 18, p. 17; July 25, 1866, s. 7, v. 14, p. 223.

See note 2.

SEC. 1393. The President may designate among the chief engineers in the service, and appoint to every fleet or squadron, an engineer, who shall be denominated "engineer of the fleet."

Engineer of the fleet. Apr. 21, 1864, s. 7, v. 13, p. 54.

SEC. 1471. The Chief * * * of the Bureau of Steam Engineering shall have the relative rank of commodore while holding said position, * * * and the title of engineer-in-chief.

Title 15, chap. 4.

Rank of Chief of Bureau. Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1476. Officers of the Engineer Corps on the active list shall have relative rank as follows:

Rank. See same sec., "Rank and Precedence."

Of the chief engineers, ten shall have the relative rank of captain, fifteen that of commander, and forty-five that of lieutenant-commander or lieutenant.

On the active list. Mar. 3, 1871, s. 7, v. 16, p. 536; Feb. 24, 1874, v. 18, p. 17.

*Passed* assistant engineers shall have the relative rank of lieutenant or master, and *assistant* engineers that of master or ensign.

Lieutenant of the junior grade. Mar. 3, 1883, 1 Supp. R. S., p. 401.

SEC. 1481. Officers of the * * * Engineer Corps * * * who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and * * * who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of commodore.

When retired from age or length of service. Mar. 3, 1871, s. 11, v. 16, p. 537.

SEC. 1484. Engineer officers graduated at the Naval Academy shall take precedence with all other officers with whom they have relative rank, according to the actual length of service in the Navy.

Engineers graduated at the Academy. Mar. 3, 1873, s. 1, v. 17, p. 555.

See note 3.

See act of Mar. 2, 1889, "An act to regulate the course at the Navy Academy."

SEC. 1488. The relative rank given by the provisions of this chapter to officers of the * * * Engineer Corps shall confer no authority to exercise military command.

Military command. Aug. 5, 1854, s. 4, v. 10, p. 587; G. O., Aug. 31, 1848, and May 27, 1847; Mar. 3, 1859, s. 2, v. 11, p. 407.

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*Note 2.*—The naval appropriation act approved August 5, 1882, requires that thereafter all appointments to the Engineer Corps shall be made from naval cadets, graduates of the year in which the vacancies which they are appointed to fill shall occur. (See Naval Academy.)

22 Stat. L., p. 286.

*Note 3.*—Engineer officers, graduates of the Naval Academy, are not entitled to the six years' constructive service allowed to other staff officers of the Navy in estimating length of service. Engineer officers not graduated at the Academy stand on the same footing with other staff officers, and are entitled to the constructive service. (Op., XV, p. 336, Devens, July 11, 1877.)

See sec. 1484.

Title 15, chap. 8.

Pay of fleet engineers.

SEC. 1556. * * * Fleet engineers, four thousand four hundred dollars. * * * Chief engineer having the same rank as pay director and pay inspector, when on duty at sea, four thousand four hundred dollars. When not at sea, the same as surgeons and paymasters, respectively. * *

Chief engineers.

Chief engineers, who have the same rank with paymasters, during the first five years after date of commission, when at sea, two thousand eight hundred dollars; on shore duty, two thousand four hundred dollars; on leave, or waiting orders, two thousand dollars; during the second five years after such date, when at sea, three thousand two hundred dollars; on shore duty, two thousand eight hundred dollars; on leave, or waiting orders, two thousand four hundred dollars; during the third five years after such date, when at sea, three thousand five hundred dollars; on shore duty, three thousand two hundred dollars; on leave, or waiting orders, two thousand six hundred dollars; during the fourth five years after such date, when at sea, three thousand seven hundred dollars; on shore duty, three thousand six hundred dollars; on leave, or waiting orders, two thousand eight hundred dollars; after twenty years from such date, when at sea, four thousand two hundred dollars; on shore duty, four thousand dollars; on leave, or waiting orders, three thousand dollars. * * *

Passed assistant engineers.

*Passed* assistant engineers, during the first five years after date of appointment, when at sea, two thousand dollars; on shore duty, one thousand eight hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; after five years from such date, when at sea, two thousand two hundred dollars; on shore duty, two thousand dollars; on leave, or waiting orders, one thousand seven hundred dollars.

Mar. 3, 1885.

23 Stat. L., 436. Supp. R. S., p. 485.

Passed assistant engineers of Navy to have increased longevity pay.

R. S., sec. 1556. Feb. 24, 1874, ch. 35.

That from and after the passage of this act the passed assistant engineers of the Navy shall receive during the third five years after the date from which they take rank as passed (first) assistants, when at sea, two thousand four hundred and fifty dollars; on shore duty, two thousand two hundred and fifty dollars; on leave or waiting orders, one thousand nine hundred dollars. During and after the fourth five years from such date, when at sea, two thousand seven hundred dollars; on shore duty, two thousand three hundred and fifty dollars; on leave or waiting orders, one thousand nine hundred and fifty dollars. And section fifteen hundred and fifty-six of the Revised Statutes is hereby amended accordingly.

Assistant engineers. See act of July 26, 1894, in regard to filling vacancies in this grade.

July 15, 1870, s. 3, v. 16, p. 331; Mar. 3, 1871, ss. 5, 6, v. 16, p. 535; Mar. 3, 1873, s. 1, v. 17, p. 555; Feb. 24, 1874, v. 18, p. 17.

*Assistant* engineers, during the first five years after date of appointment, when at sea, one thousand seven hundred dollars; on shore duty, one thousand four hundred dollars; on leave, or waiting orders, one thousand dollars; after five years from such date, when at sea, one thousand nine hundred dollars; on shore duty, one thousand six hundred dollars; on leave, or waiting orders, one thousand two hundred dollars.

For the purpose of promoting a knowledge of steam-engineering and iron-ship building among the young men of the United States, the President may, upon the application of an established scientific school or college within the United States, detail an officer from the Engineer Corps of the Navy as professor in such school or college: *Provided*, That the number of officers so detailed shall not at any time exceed twenty-five, and such details shall be governed by rules to be prescribed from time to time by the President: *And provided further*, That such details may be withheld or withdrawn whenever, in the judgment of the President, the interests of the public service shall so require.

Feb. 26, 1879.

Detail of engineers for colleges.

Feb. 26, 1879, v. 20, p. 322.

That section twelve hundred and twenty-five of the Revised Statutes of the United States, as amended by an act of Congress approved July fifth, eighteen hundred and eighty four, be, and the same is hereby, further amended, so as to read as follows:

Sept. 26, 1888.

25 Stat. L., 491.

Detail of officers of Army and Navy to educational institutions.

"SEC. 1225. The President may, upon the application of any established military institute, seminary or academy, college or university, within the United States having capacity to educate at the same time not less than one hundred and fifty male students, detail an officer of the Army or Navy to act as superintendent, or professor thereof;

*Substitute for* R. S., sec. 1225, as amended by 1884, July 5, ch. 217 (23 Stat. L., 108.)

And they shall be apportioned throughout the United States, first, to those State institutions applying for such detail that are required to provide instruction in military tactics under the provisions of the act of Congress of July second, eighteen hundred and sixty-two, donating lands for the establishment of colleges where the leading object shall be the practical instruction of the industrial classes in agriculture and the mechanic arts, including military tactics; and after that, said details to be distributed, as nearly as may be practicable, according to population.

How apportioned through U. S.

July 2, 1862, ch. 130 (12 Stat. L., 503).

The Secretary of War is authorized to issue, at his discretion and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, such number of the same as may appear to be required for military instruction and practice by the students of any college or university under the provisions of this section, and the Secretary shall require a bond in each case, in double the value of the property, for the care and safe keeping thereof, and for the return of the same when required":

Secretary of War may issue ordnance stores to such institutions.

*Provided*, That nothing in this act shall be so construed as to prevent the detail of officers of the Engineer Corps of the Navy as professors in scientific schools or colleges as now provided by act of Congress approved February twenty-sixth, eighteen hundred and seventy-nine, entitled "An act to promote a knowledge of steam-engineering and iron-ship building among the students of scientific schools or colleges in the United States;

Detail of engineer officers of Navy as professors in scientific schools.

Feb. 26, 1879, ch. 105.

"And the Secretary of War is hereby authorized to issue ordnance and ordnance stores belonging to the Government on the terms and conditions hereinbefore provided to any college or university at which a retired officer of the Army

Colleges, etc., to which retired officers of Army are assigned to have issues of ordnance stores.

R. S., sec. 1260.

may be assigned as provided by section twelve hundred and sixty of the Revised Statutes.

*Repeal of* R. S., sec. 1225, as amended by 1884, July 5, ch. 217 (23 Stat. L., 108.) Sept. 26, 1888.

SEC. 2. That the said section twelve hundred and twenty-five of the Revised Statutes of the United States, as amended by the said act of Congress approved July fifth, eighteen hundred and eighty-four, and all acts and parts of acts inconsistent or in conflict with the provisions of this act, be, and the same are hereby repealed, saving always, however, all acts and things done under the said amended section as heretofore existing.

Jan. 18, 1891.

26 Stat. L., 716. Detail of army and navy officers to colleges, etc. —only where military instruction.

*Provided*, That no officer shall be detailed to or maintained at any of the educational institutions mentioned in said act where instruction and drill in military tactics is not given:

Nov. 3, 1893.

28 Stat. L., 7. Supp. R. S., 1892-95, p. 152. Army details of officers to colleges,—limit increased to 100. Aug. 6, 1894, ch. 228, par. 3.

That section twelve hundred and twenty-five of the Revised Statutes, concerning details of officers of the Army and Navy to educational institutions, be, and the same is hereby, amended so as to permit the President to detail under the provisions of said act not to exceed one hundred officers of the Army of the United States;

Service. See note 4.

and no officer shall be thus detailed who has not had five years service in the Army

Duration.

and no detail to such duty shall extend for more than four years

Retired officers. R. S., sec. 1260. See note 5.

and officers on the retired list of the Army may upon their own application be detailed to such duty and when so detailed shall receive the full pay of their rank;

Army and Navy, maximum of detail increased to 110.

and the maximum number of officers of the Army and Navy to be detailed at any one time under the provisions of the act approved January thirteenth, eighteen hundred and ninety-one, amending section twelve hundred and twenty-five of the Revised Statutes as amended by an act approved September twenty-sixth, eighteen hundred and eighty-eight, is hereby increased to one hundred and ten.

## HOSPITALS, ASYLUMS, ETC.


Sec.
4807. Superintendence of Navy hospitals.
4809. Appropriation of fines.
4810. Purchase and erection of Navy hospitals.
4811. Government of Naval Asylum.
4812. Allowance of rations to Navy hospitals.
4813. Allowance from pensions.
—— Hospital at Hot Springs, Ark.
—— Closing of hospitals.


Title 59, chap. 1.

Superintendence of Navy hospitals.

SEC. 4807. The Secretary of the Navy shall have the general charge and superintendence of Navy hospitals.

See act Nov. 3, 1893.

*Note 4.*—For other acts relating to details of officers of the Army and Navy see the following: 1879, Feb. 26, ch. 105 (1 Supp. R. S., 221), authorizing the detail of not exceeding 25 officers of the Engineer Corps of the Navy. 1888, Sept. 26, ch. 1037 (1 Supp. R. S., 620), authorizing the detail of not exceeding 50 officers from the Army and 10 from the Navy in addition to those authorized by the preceding act, and providing for the apportionment of the officers so detailed, and the issuance of ordnance stores to the colleges to which such officers are assigned. 1891, Jan. 13, ch. 70 (1 Supp. R. S., 887), increasing the maximum of the officers of the Army to be so detailed to 75, and the maximum for Army and Navy to 85, and limiting such detail to institutions where instruction and drill in military tactics is given. 1895, Mar. 2, ch. 186, par. 2, authorizing the detail of any retired officer of the Navy or Marine Corps. R. S., sec. 1225, named in the text, as well as 1884, July 5, ch. 217 (23 Stat. L., 108), were repealed by the act of 1888 above referred to.

*Note 5.*—As to such details of retired officers, see 1894, Aug. 6, ch. 228, par. 3.

SEC. 15. Sections forty-five hundred and eighty-five, forty-five hundred and eighty-six, and forty-five hundred and eighty-seven of the Revised Statutes, and all other acts and parts of acts providing for the assessment and collection of a hospital tax for seamen, are hereby, repealed, and the expense of maintaining the Marine Hospital Service shall hereafter be borne by the United States out of the receipts for duties on tonnage provided for by this act; and so much thereof as may be necessary, is hereby appropriated for that purpose.

June 26, 1884.
Supp. R. S., p. 443.
Hospital tax on seamen abolished.
Expenses of Marine-Hospital Service, how paid.
*Repeal of* R. S., ss. 4585-4587.
Mar. 3, 1875, ch. 156, and 18 Stat. L., 485.

SEC. 4809. All fines imposed on Navy officers, seamen, and marines shall be paid to the Secretary of the Navy, for the maintenance of Navy hospitals.

Appropriation of fines.
Feb. 26, 1811, s. 2, v. 2, p. 650; July 10, 1832, s. 5. v. 4, p. 573.

SEC. 4810. The Secretary of the Navy shall procure at suitable places proper sites for Navy hospitals, and if the necessary buildings are not procured with the site, shall cause such to be erected, having due regard to economy, and giving preference to such plans as with most convenience and least cost will admit of subsequent additions, when the funds permit and circumstances require; and shall provide, at one of the establishments, a permanent asylum for disabled and decrepit Navy officers, seaman, and marines.

Purchase and erection of Navy hospitals.
Feb. 26, 1811, s. 3, v. 2, p. 650; July 10, 1832, s. 5, v. 4, p. 573.
Naval Asylum now located at Philadelphia.

SEC. 4811. The asylum for disabled and decrepit Navy officers, seamen, and marines shall be governed in accordance with the rules and regulations prescribed by the Secretary of the Navy. [See section 5757, naval pension fund, as to provision for those preferring pension to the asylum.]

Government of Naval Asylum.
Feb. 26, 1811, s. 4, v. 2, p. 650.

SEC. 4812. For every Navy officer, seaman, or marine admitted into a Navy hospital, the institution shall be allowed one ration per day during his continuance therein, to be deducted from the account of the United States with such officer, seaman, or marine.

Allowance of rations to Navy hospitals.
Ibid., s. 5.

SEC. 4813. Whenever any Navy officer, seaman, or marine, entitled to a pension, is admitted to a Navy hospital, the pension, during his continuance in the hospital, shall be paid to the Secretary of the Navy and deducted from the account of such pensioner.

Allowance from pension.
Ibid.

*Provided*, That one hundred thousand dollars be, and hereby is, appropriated for the erection of an Army and Navy hospital at Hot Springs, Arkansas, which shall be erected by and under the direction of the Secretary of War, in accordance with plans and specifications to be prepared and submitted to the Secretary of War by the Surgeons-General of the Army and Navy; which hospital, when in a condition to receive patients, shall be subject to such rules, regulations, and restrictions as shall be provided by the President of the United States: *Provided further*, That such hospital shall be erected on the government reservation at or near Hot Springs, Arkansas.

June 30, 1882.
Army and Navy hospital at Hot Springs, Ark.
June 30, 1882, 22 Stat. L., p. 121.
Army appropriation act.

And if the Secretary of the Navy shall not be able to maintain properly the whole number of naval hospitals now kept open on the amounts hereby appropriated for the main-

Mar. 3, 1883.
Closing of hospitals.

Aug. 5, 1882, and Mar. 3, 1883, v. 22, Stat. L., p. 296.

tenance of and civil establishment at naval hospitals, he shall close those which are least necessary to the service, and provide for the patients now cared for therein at such other naval hospitals as may be most convenient.

## INSANE OF THE NAVY—GOVERNMENT HOSPITAL.

Sec.
1551. Authority of the Secretary of the Navy, etc.
4838. Establishment of the Government Hospital for the Insane.
843. Admission of insane persons of the Army, Navy, etc.
— Limit to Admission.
— Transfer of insane convicts, etc.
— Admission of insane inmates of National Home for Disabled Volunteers.

Title 15, chap. 7.

Insane of the Navy.

Aug. 3, 1848, s. 13, v. 9, p. 272; July 2, 1864, s. 2, v. 13, p. 348.

SEC. 1551. The Secretary of the Navy may cause persons in the naval service or Marine Corps, who become insane while in the service, to be placed in such hospital for the insane as, in his opinion, will be most convenient and best calculated to promise a restoration of reason. And he may pay to any such hospital, other than the Government Hospital for the Insane in the District of Columbia, the pay which may from time to time be due to such insane person, and he may, in addition thereto, pay to such institution, from the annual appropriation for the naval service, under the head of contingent enumerated, any deficiency of a reasonable expense, not exceeding one hundred dollars per annum.

Title 59, chap. 4.

Government Hospital for the Insane.

Mar. 3, 1855, s. 1, v. 10, p. 682.

SEC. 4838. There shall be in the District of Columbia a Government Hospital for the insane, and its objects shall be the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia.

Admission of insane persons of the Army, Navy, Marine Corps, etc.

June 15, 1860, s. 1, v. 12, p. 23; July 13, 1866, ss. 1, 2, v. 14, pp. 93, 94.

SEC. 4843. The superintendent, upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:

First. Insane persons belonging to the Army, Navy, Marine Corps, and revenue-cutter service.

Second. Civilians employed in the Quartermaster's and Subsistence Departments of the Army who may be, or may hereafter become, insane while in such employment.

Third. Men who, while in the service of the United States, in the Army, Navy, or Marine Corps, have been admitted to the hospital, and have been thereafter discharged from it on the supposition that they have recovered their reason, and have, within three years after such discharge, become again insane from causes existing at the time of such discharge, and have no adequate means of support.

Fourth. Indigent insane persons who have been in either of the said services and been discharged therefrom on account of disability arising from such insanity.

Fifth. Indigent insane persons who have become insane within three years after their discharge from such service, from causes which arose during and were produced by said service.

Hereafter the admission to the hospital shall be limited to such persons as are entitled to treatment therein under the provisions of title 59, chap. 4, of the Revised Statutes of the United States, and under the act approved March 3, 1875, chap. 156.

June 16, 1880.

Limit to admission.
June 16, 1880, v. 21, p. 259.
See notes.

That upon the application of the Attorney-General the Secretary of the Interior be, and he is hereby, authorized and directed to transfer to the Government Hospital for the Insane in the District of Columbia all persons who, having been charged with offenses against the United States, are in the actual custody of its officers, and all persons who have been or shall be convicted of any offense in a court of the United States and are imprisoned in any State prison or penitentiary of any State or Territory, and who during the term of their imprisonment have or shall become and be insane.

Aug. 7, 1882.

Transfer of insane convicts, etc., to Government Hospital.
June 23, 1874, s. 1, v. 18, p. 251; Aug. 7, 1882, 22 Stat. L., p. 330.

In addition to the persons now entitled to admission to said hospital, any inmate of the National Home for Disabled Volunteer Soldiers, who is now or may hereafter become insane shall, upon an order of the president of the board of managers of the said National Home, be admitted to said hospital and treated therein; and if any inmate so admitted from said National Home is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or in part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital, and be paid over to the proper officer of said institution for the general uses thereof.

Admission of insane from National Home for Disabled Volunteers.
Aug. 7, 1882, 22 Stat. L., p. 330.
See note 1.

Government Hospital for the Insane. * * That hereafter the admissions to the hospital shall be limited to such persons as are entitled to treatment therein under the provisions of title fifty-nine, chapter four, of the Revised Statutes of the United States, and under the act approved March third, eighteen hundred and seventy-five, chapter one hundred and fifty-six, second session, Forty-third Congress. * *

June 16, 1880.

Supp. R. S. p. 298.
1882, Aug. 5, ch. 390, par. 3, *post*.
Admissions to Hospital for Insane in District of Columbia.
R. S., §§ 4843-4854.
1875, March 3, ch. 156, § 5; 1882, Aug. 7, ch. 433, par. 14; 1884, July 7, ch. 332, par. 5, pp. 381, 469.

## NATIONAL HOME FOR VOLUNTEER SOLDIERS AND SAILORS.

Sec.
4832. Persons entitled to admission
Sec.
—— Disposition of pensions.

SEC. 4832. The following persons only shall be entitled to the benefits of the National Home for disabled volunteer soldiers, and may be admitted thereto, upon the recom-

Title 59, chap. 3.

What persons entitled to admission, etc.

*Note 1.*—Volunteer soldiers who have become insane within a period of more than three years after their discharge from service may be admitted to the Government Asylum for the Insane in the District of Columbia, whether at the time they became insane they were inmates of any volunteer soldiers' asylum or not. (Op., XIV, p. 225, Williams, Apr. 23, 1873; but see act of June 16, 1880, *ante*.)

An act approved March 3, 1875, v. 18, p. 485, chap. 156, sec. 5, provides that insane patients of the Marine-Hospital Service may be admitted to the Government Hospital for the Insane upon the order of the Secretary of the Treasury, at a charge not exceeding four dollars and fifty cents a week.

An act approved June 23, 1874, 18 Stat. L., 251, provides for the admission of insane convicts to the insane asylum in the District of Columbia.

Mar. 21, 1866, s. 7, v. 14, p. 11; Feb. 28., 1871, Res. 45, v. 16, p. 599; Jan. 23, 1873, s. 1, v. 17, p. 417.

These homes are at Augusta, Me., Milwaukee, Wis., Dayton, Ohio, Knightstown, Ind., and Hampton, Va.

mendation of three of the board of managers, namely: All officers and soldiers who served in the late war for the suppression of the rebellion, and the volunteer soldiers and sailors of the war of eighteen hundred and twelve and of the Mexican war, and not provided for by existing laws, who have been or may be disabled by wounds received or sickness contracted in the line of their duty; and such of these as have neither wife, child, nor parent dependent upon them, on becoming inmates of this home, or receiving relief therefrom, shall assign thereto their pensions when required by the board of managers, during the time they shall remain therein or receive its benefits.

Aug. 7, 1882.

Pensions of inmates of homes to be paid to treasurers of such institutions.

Aug. 7, 1882, v. 22, Stat. L., p. 322.

See note 1.

That all pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurers of said home, to be applied by such treasurers as provided by law, under the rules and regulations of said home. Said payments shall be made by the pension agent upon a certificate of the proper officer of the home that the pensioner is an inmate thereof on the day to which said pension is drawn. The treasurers of said home, respectively, shall give security, to the satisfaction of the managers of said home, for the payment and application by them of all arrears of pension and pension-moneys they may receive under the aforesaid provision. And section two of the act entitled "An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for deficiencies, and for other purposes," approved February twenty-sixth, eighteen hundred and eighty-one, is hereby revived and continued in force.

*Note 1.*—Under the act of Feb. 26, 1881, the pensions are to be paid over to the treasurer, without deduction for fines or penalties. Any balance on discharge of inmate is to be paid over to him; in case of death, to his widow, children, or legal representatives.

## ARTIFICIAL LIMBS, TRUSSES, AND APPLIANCES.


Sec.
1176. Trusses, to whom furnished.
1177. Applications for trusses.
1178. Purchase of trusses.
4787. Artificial limbs to be furnished every five years.
4788. Commutation rates in money value for limb, etc.
4789. Money commutation, how paid.
4790. Commutation to persons who can not use artificial limbs.
4791. Transportation for persons to whom artificial limbs are furnished.
—— Surgical appliances.


Title 14, chap. 1.

Trusses, to whom furnished.

May 28, 1872, s. 1, v. 17, p. 164; Mar. 3, 1879, v. 20, p. 353.

See note 1.

See sec. 1176, Pensions.

SEC. 1176. That every soldier of the Union Army, or petty-officer, seaman, or marine in the naval service, who was ruptured while in the line of duty during the late war for the suppression of the rebellion, or who shall be so ruptured thereafter in any war, shall be entitled to receive a single or double truss of such style as may be designated by the Surgeon-General of the United States Army as best suited for such disability; and whenever the said truss or trusses so furnished shall become useless from wear, de-

See sec. 1176.

*Note 1.*—It is left with the Surgeon-General of the Army to adopt one style, or different styles, keeping in view the selection of that which in his judgment is best adapted to the purpose for which intended. (Op., XIV, 72. July 30, 1872.)

struction, or loss, such soldier, petty-officer, seaman, or marine shall be supplied with another truss on making a like application as provided for in section two of the original act of which this is an amendment: *Provided*, That such application shall not be made more than once in two years and six months: *And provided further*, That sections two and three [secs. 1177 and 1178 R. S.] of the said act of May twenty-eighth, eighteen hundred and seventy-two, shall be construed so as to apply to petty-officers, seamen, and marines of the naval service, as well as to soldiers of the Army.

Amended section.

SEC. 1177. Application for such truss shall be made by the ruptured soldier, to an examining surgeon for pensions, whose duty it shall be to examine the applicant, and when found to have a rupture or hernia, to prepare and forward to the Surgeon-General an application for such truss without charge to the soldier.

Application for trusses.
May 28, 1872, s. 2, v. 17, p. 164.
See sec. 4787.

SEC. 1178. The Surgeon-General is authorized and directed to purchase the trusses required for such soldiers, at wholesale prices, and the cost of the same shall be paid upon the requisition of the Surgeon-General out of any moneys in the Treasury not otherwise appropriated.

Trusses, purchase of.
May 28, 1872, s. 3, v. 17, p. 164.

Title 57.

SEC. 4787. Every officer, soldier, seaman, and marine, who was disabled, during the war for the suppression of the rebellion, in the military or naval service, and in the line of duty, or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department, since the seventeenth day of June, eighteen hundred and seventy, with an artificial limb or apparatus for resection, or who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every five years thereafter, under such regulations as have been or may be prescribed by the Surgeon-General of the Army.

Artificial limbs, etc., to be furnished every five years.
See note 2.
See same sec. Title Pension Funds; also Pension Laws now in force.
See act of Mar. 3, 1891, amending this sec. by striking out "five" and inserting "three."
20 A. G. Op., p. 83.

The provisions of this section shall apply to all officers, non-commissioned officers, enlisted and hired men of the land and naval forces of the United States, who, in the line of their duty as such, shall have lost limbs or sustained bodily injuries depriving them of the use of any of their limbs, to be determined by the Surgeon-General of the Army; and the term of five years herein specified shall be held to commence in each case with the filing of the application for the benefits of this section.

Persons entitled.
July 27, 1868, s. 14, v. 15, p. 237; June 17, 1870, s. 1, v. 16, p. 153; June 30, 1870, v. 16, p. 174; Mar. 23, 1876, v. 19, p. 8; Feb. 27, 1877, v. 19, p. 252.

Mar. 3, 1891.

That section forty-seven hundred and eighty-seven of the Revised Statutes of the United States be amended by striking out the word "five" where it occurs therein, and inserting in lieu thereof the word "three" so that when amended said section will read as follows:

26 Stat. L., 1103. Supp. R. S., p. 947.
Substitute for R. S., sec. 4787.

Every officer, soldier, seaman, and marine who was disabled during the war for the suppression of the rebellion, in the military or naval service, and in the line of duty,

Artificial limbs, etc., to be furnished every three years.

*Note 2.*—Held by the War Department that desertion does not affect the rights of a person disabled, as this section indicates, to artificial limbs or apparatus, and that it might be properly construed to include the mechanics and laborers employed at the arsenals under Title XVII, R. S. (Winthrop's Digest, 122.)

The act of Aug. 15, 1876, v. 19, p. 203, allows commutation for an artificial limb or appliances every five years.

See sec. 4787.

July 27, 1868, s. 14; June 17, 1870, s. 1.
Act June 30, 1870; June 8, 1872, ss. 1, 3; see s. 1177.
See act Aug. 15, 1876, s. 1; see act Feb. 27, 1877.

or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department since the seventeenth day of June, eighteen hundred and seventy, with an artificial limb or apparatus for resection, who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every three years thereafter, under such regulations as have been or may be prescribed by the Surgeon-General of the Army.

Commutation rates in money value for limbs, etc.
June 17, 1870, s. 1. Sec. 4787 amended by act Feb. 27, 1877, amended by act Mar. 3, 1891. June 8, 1872, s. 1; Aug. 15, 1876, s. 1.
Mar. 3, 1891. 26 Stat. L., 948, par. 5.

SEC. 4788. Every person entitled to the benefits of the preceding section may, if he so elects, receive, instead of such limb or apparatus, the money value thereof, at the following rates, namely: For artificial legs, seventy-five dollars; for arms, fifty dollars; for feet, fifty dollars; for apparatus for resection, fifty dollars.

Commutation for artificial limbs, etc., to be paid to applicant; no fee to agents.
R. S., sec. 4787, 1891, Mar. 3, ch. 562, p. 947.

Artificial limbs: For furnishing artificial limbs and apparatus, or commutation therefor, * * and hereafter in case of commutation the money shall be paid directly to the soldier, sailor, or marine, and no fee or compensation shall be allowed or paid to any agent or attorney. * *

Money commutation, how to be paid.
June 17, 1870, s. 2, v. 16, p. 153.

SEC. 4789. The Surgeon-General shall certify to the Commissioner of Pensions a list of all soldiers who elect to receive money commutation instead of limbs or apparatus, with the amount due to each, and the Commissioner of Pensions shall cause the same to be paid to such soldiers in the same manner as pensions are paid.

Money commutation to those who can not use artificial limbs.
June 17, 1870, s. 3; June 8, 1872, s. 1. See Aug. 15, 1876, s. 1, amended by act Feb. 27, 1877.

SEC. 4790. Every person in the military or naval service who lost a limb during the war of the rebellion, or is entitled to the benefits of section forty-seven hundred and eighty-seven, but from the nature of his injury is not able to use an artificial limb, shall be entitled to the benefits of section forty-seven hundred and eighty-eight, and shall receive money commutation as therein provided.

Transportation for persons to whom artificial limbs are furnished.
July 28, 1866, v. 14, p. 342; Mar. 23, 1876, v. 19, p. 8; Aug. 15, 1876, s. 2, v. 19, p. 204; Feb. 27, 1877, v. 19, p. 252.

SEC. 4791. The Secretary of War is authorized and directed to furnish to the persons embraced by the provisions of section forty-seven hundred and eighty-seven, transportation to and from their homes and the place where they may be required to go to obtain artificial limbs provided for them under authority of law. The transportation allowed for having artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded from the appropriations for invalid pensions.

## CEMETERIES—NATIONAL.

Sec.
4877. Inclosures, headstones, etc.
4878. Who may be buried in national cemeteries.

Title 59, chap. 6.

Inclosures, headstones, and registers.

SEC. 4877. In the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors, the Secretary of War is hereby directed to have the same inclosed with a good and substantial stone or iron fence;

and to cause each grave to be marked with a small headstone or block, which shall be of durable stone, and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon, when the same are known, and also with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party in a register of burials to be kept at each cemetery and at the office of the Quartermaster-General, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or if these are unknown, it shall be so recorded.

Feb. 22, 1867, s. 1, v. 14, p. 399; June 8, 1872, v. 17, p. 345; Mar. 3, 1873, v. 17, p. 545. See note 1.

SEC. 4878. All soldiers, sailors, or marines, dying in the service of the United States, or dying in a destitute condition, after having been honorably discharged from the service, or who served during the late war, either in the regular or volunteer forces, may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment.

Who may be buried in national cemeteries. July 17, 1862, s. 18, v. 12, p. 596; June 1, 1872, v. 17, p. 202, Mar. 3, 1873, v. 17, p. 605.

## HYDROGRAPHIC OFFICE.


| Sec. | Sec. |
|---|---|
| 431. Establishment of office. | 3692. Proceeds of sales of stores to surveying expeditions. |
| 77. Maps, charts, etc. | —— Charts, how sold. |
| 77. Money received from sale. | —— Civil employees. |
| 686. Foreign hydrographic surveys. | |


SEC. 431. There shall be a Hydrographic Office attached to the Bureau of Navigation in the Navy Department, for the improvement of the means for navigating safely the vessels of the Navy and of the mercantile marine, by providing, under the authority of the Secretary of the Navy, accurate and cheap nautical charts, sailing directions, navigators, and manuals of instructions for the use of all vessels of the United States, and for the benefit and use of navigators generally.

Title 10. Hydrographic Office. June 21, 1866, s. 1, v. 14, p. 69.

SEC. 77. The Secretary of the Navy is authorized to cause to be prepared, at the Hydrographic Office attached to the Bureau of Navigation in the Navy Department, maps, charts, and nautical books relating to and required in navigation, and to publish and furnish them to navigators at the cost of printing and paper, and to purchase the plates and copyrights of such existing maps, charts, navigators' sailing directions and instructions, as he may consider necessary, and when he may deem it expedient to do so, and under such regulations and instructions as he may prescribe.

Act Jan. 12, 1895, supp., p. 361, 1892–1895. Maps, charts, etc.

All moneys which may be received from the sale of maps, charts, and nautical books shall be returned by the Secretary of the Navy into the Treasury of the United States, to be used in the further preparation and publication of maps, charts, navigators' sailing directions, and instructions for

Ibid. Money received from sales of maps, charts, etc.

*Note 1.*—An act approved Feb. 3, 1879, chap. 44, provides for headstones for soldiers' graves in private cemeteries. 20 Stat. L., p. 281.

the use of seamen, to be sold at the cost of printing and paper.

Ibid.
Foreign hydrographic surveys.
Feb. 21, 1861, s. 7, v. 12, p. 150.

SEC. 78. All appropriations made for the preparation or publication of foreign hydrographic surveys shall only be applicable to their object, upon the approval by the Secretary of the Navy, after a report from three competent naval officers, to the effect that the original data for proposed charts are such as to justify their publication; and it is hereby made the duty of the Secretary of the Navy to order a board of three naval officers to examine and report upon the data, before he shall approve of any application of moneys to the preparation or publication of such charts or hydrographic surveys.

Rev. Stat., p. 729.
Proceeds of certain sales, etc., of material.
May 8, 1872, s. 5, v. 17, p. 83; Mar. 3, 1847, s. 1, v. 9, p. 171; Apr. 20, 1866, ss. 1, 2, v. 14, p. 40; July 28, 1866, s. 25, v. 14, p. 336; June 8, 1872, v. 17, p. 337.

SEC. 3692. All moneys received from * * * sale of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.

Feb. 14, 1879.
Cost price for charts.
Feb. 14, 1879, v. 20, p. 286; May 4, 1878, v. 20, p. 51.

All charts hereafter furnished to mariners or others not in the Government service shall be paid for at the cost price of paper and printing paid by the Government.

## LINE OFFICERS OF THE NAVY.


Sec.
1362. Grades of line officers.
—— Change of titles.
1363. Number on the active list.
—— Restriction.
1364. When exceeded.
1365. Selection of rear-admirals during war.
1366. Promotion of rear-admirals during peace.
1367. Secretaries to admiral, etc.
—— Officers as secretaries and clerks afloat.
1434. Command of squadrons, flag officer.
1435. Assignment of lieutenant-commanders.
1467. Rank of line officers.
1468. Precedence of commanding officers.
1469. Aid or executive.
1470. Rights of staff officers, senior to aid.
1472. Line officer as chief of a bureau.
1490. Ensigns as steerage officers.


Title 15, chap. 1.
Grades of line officers.
See note 1.

SEC. 1362. The active list of the line officers of the Navy of the United States shall be divided into eleven grades, as follows, namely:

First. Admiral.
Second. Vice-Admiral.
Third. Rear-admirals.
Fourth. Commodores.
Fifth. Captains.
Sixth. Commanders.
Seventh. Lieutenant-commanders.
Eighth. Lieutenants.
Ninth. Lieutenants junior grade.
Tenth. Ensigns.

Mar. 3, 1883, 22 Stat., p. 472.
See act of June 26, 1884, in relation to graduates of Naval Academy to be commissioned ensigns.
See act Mar. 3, 1883, p. 63.

Eleventh. Midshipmen.

*Note 1.*—See sec. 5, act of June 29, 1888, chap. 496, "An act to prevent injurious deposits in New York Harbor, and so forth," in relation to a line officer of the Navy to act as supervisor of the harbor. Title, Care of Public Property.

*Provided*, That vacancies occurring in the grades of Admiral and Vice-Admiral shall not be filled by promotion, or in any other manner; and that when the offices of said grades shall become vacant, the grade itself shall cease to exist.

Admiral and Vice-Admiral to cease.
July 16, 1862, s. 1, v. 12, p. 583; Dec. 21, 1864, s. 1, v. 13, p. 420; July 25, 1866, s. 1, v. 14, p. 222; Mar. 2, 1867, s. 1, v. 14, p. 516; Jan. 24, 1873, v. 17, p. 418.

**Mar. 3, 1883.**

The title *of master* is hereby changed to that of lieutenants, and the masters now on the list shall constitute a junior grade of, and be commissioned as, lieutenants, having the same rank and pay as now provided by law for masters, but promotion to and from said grade shall be by examination as provided by law for promotion to and from the grade of master, and nothing herein contained shall be so construed as to increase the pay now allowed by law to any officer in the line or staff; * * * the title of *midshipman* is hereby changed to that of ensign, and the midshipmen now on the list shall constitute a junior grade of, and be commissioned as, ensigns, having the same rank and pay as now provided by law for midshipmen, but promotions to and from said grade shall be under the same regulations and requirements as now provided by law for promotion to and from the grade of midshipmen, and nothing herein contained shall be so construed as to increase the pay now allowed by law to any officer of said grade or of any officer of relative rank.

Titles of master and midshipman changed.
Mar. 3, 1883, 22 Stat. L., 472.

**Title 15, chap. 1.**

SEC. 1363. There shall be allowed on the active list of the line officers of the Navy one Admiral, one Vice-Admiral, *six* rear-admirals, *ten* commodores, *forty-five* captains, *eighty-five* commanders, *seventy-four* lieutenant-commanders, *two hundred and fifty* lieutenants, *seventy-five* masters, and *seventy-five* ensigns.

Number on the active list.
July 25, 1866, s. 1, v. 14, p. 222; July 15, 1870, ss. 9, 10, v. 16, p. 333; Aug. 5, 1882, 22 Stat. L., p. 285.

**Aug. 5, 1882.**

Hereafter only one-half of the vacancies in the various grades in the line of the Navy shall be filled by promotion until such grades shall be reduced to the following numbers [as in sec. 1363], and thereafter promotions to all vacancies shall be made but not to increase either of said grades above the number aforesaid.

Rule of promotion in the line.
Aug. 5, 1882, 22 Stat., p. 286.

**Title 15, chap. 1.**

SEC. 1364. The provisions of the foregoing section [1363 and August 5, 1882] shall not have the effect to vacate the commission of any lieutenant-commander, lieutenant, master, or ensign appointed according to law, in excess of the respective number therein fixed; nor to preclude the advancement of any officer to a higher grade, for distinguished conduct in battle, or for extraordinary heroism, under the provisions of sections fifteen hundred and six and fifteen hundred and eight.

When exceeded.
July 25, 1866, ss. 1, 2, v. 14, p. 222; July 16, 1862, s. 9, v. 12, p. 584.
See Promotion.

SEC. 1365. During war rear-admirals shall be selected from those officers on the active list, not below the grade of commanders, who shall have eminently distinguished themselves by courage, skill, and genius in their profession; but no officer shall be so promoted, under this provision, unless, upon recommendation of the President by name, he has received the thanks of Congress for distinguished service.

Selection of rear-admirals during war.
July 16, 1862, s. 7, v. 12, p. 584.

Promotion of rear-admirals during peace.
July 16, 1862, s. 7, v. 12, p. 584.
See Promotion; also act Aug. 5, 1882.

SEC. 1366. During peace, vacancies in the grade of rear-admiral shall be filled by regular promotion from the list of commodores, subject to examination according to law.

May 4, 1878.

Secretaries to Admiral and Vice-Admiral on sea service.
May 4, 1878, v. 20, p. 50.
Lieutenant of the junior grade.
Mar. 3, 1883.

On and after the first day of July, eighteen hundred and seventy-eight, there shall be no appointments made from civil life of secretaries or clerks to the Admiral or Vice-Admiral, when on sea service, commanders of squadrons, or of clerks to commanders of vessels; and an officer not above the grade of lieutenant shall be detailed to perform the duties of secretary to the Admiral or Vice-Admiral, when on sea service, and one not above the grade of *lieutenant of the junior grade* to perform the duties of clerk to a rear-admiral or commander, and one not above the grade of ensign to perform the duties of clerk to a captain, commander, or lieutenant-commander when afloat. * * *

Title 15, chap. 2.

Command of squadrons.
Dec. 21, 1861, s. 4, v. 12, p. 329.

SEC. 1434. The President may select any officer not below the grade of commander on the active list of the Navy, and assign him to the command of a squadron, with the rank and title of "flag-officer;" and any officer so assigned shall have the same authority and receive the same obedience from the commanders of ships in his squadron, holding commissions of an older date than his, that he would be entitled to receive if his commission were the oldest.

Lieutenant-commanders, how assignable.
July 16, 1862, s. 3, v. 12, p. 584; July 25, 1866, s. 5, v. 14, p. 223.

SEC. 1435. Lieutenant-commanders may be assigned to duty as first lieutenants of naval stations, as navigation and watch officers on board of vessels of war, and as first lieutenants of vessels not commanded by lieutenant-commanders.

Title 15, chap. 4.

Rank. See same sec. Rank and Precedence.
July 16, 1862, s. 1, v. 12, p. 583; Apr. 21, 1864, s. 7, v. 13, p. 54; Jan. 24, 1865, s. 1, v. 13, p. 424.

SEC. 1467. Line officers shall take rank in each grade according to the dates of their commissions.

Commanding officers of vessels and stations.
Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1468. Commanding officers of vessels of war and of naval stations shall take precedence over all officers placed under their command.

Aid or executive officer.
Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1469. The Secretary of the Navy may, in his discretion, detail a line officer to act as the aid or executive of the commanding officer of a vessel of war or naval station, which officer shall, when not impracticable, be next in rank to said commanding officer. Such aid or executive shall, while executing the orders of the commanding officer on board the vessel or at the station, take precedence over all officers attached to the vessel or station. All orders of such aid or executive shall be regarded as proceeding from the commanding officer, and the aid or executive shall have no independent authority in consequence of such detail.

Rights of staff officers.
Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1470. Staff officers, senior to the officers so detailed, shall have the right to communicate directly with the commanding officer.

SEC. 1472. When the office of Chief of Bureau is filled by a line officer below the rank of commodore, said officer shall have the relative rank of commodore during the time he holds said office.

Relative rank as chief of bureau.
Mar. 3, 1871, s. 12, v. 16, p. 537.

That the distinctive badge adopted by the Regular Army and Navy Union of the United States may be worn, in their own right, upon all public occasions of ceremony by officers and enlisted men of the Army and Navy of the United States who are members of said organization.

May 11, 1894.
28 Stat. L., 583.
Supp. R. S., 1892-95, p. 336.
Army and Navy officers may wear Regular Army and Navy Union badge.
R. S., sec. 1227.

## MATES.

Sec.
1408. Seamen may be rated as mates.
1409. Rating shall not discharge from enlistment.
1556. Pay of mates.

SEC. 1408. Mates may be rated, under authority of the Secretary of the Navy, from seamen and ordinary seamen who have enlisted in the naval service for not less than two years.

Title 15, chap. 1.
Seamen may be rated as mates. See note 1.
May 17, 1864, s. 3, v. 13, p. 79; Mar. 3, 1865, s. 3, v. 13, p. 539. See note 2.

SEC. 1409. The rating of an enlisted man as a mate, or his appointment as a warrant officer, shall not discharge him from his enlistment.

Rating shall not discharge from enlistment.
Idem.

SEC. 1556. * * * Mates, when at sea, nine hundred dollars; on shore duty, seven hundred dollars; on leave, or waiting orders, five hundred dollars.

Title 15, chap. 8.
Pay of mates.
July 15, 1870, s. 3, v. 16, p. 330.

That the law regulating the retirement of warrant officers in the Navy shall be construed to apply to the twenty-eight officers now serving as mates in the Navy, and the said mates shall be entitled to receive annual pay at the rates following: When at sea, one thousand two hundred dollars; on shore duty, nine hundred dollars; on leave or waiting orders, seven hundred dollars:

Aug. 1, 1894.
28 Stat. L., 212.
Supp. R. S. 1892-95, p. 220.
Mates may be retired as warrant officers. See secs. 1405 and 1406, title Warrant Officers. See note 3. R. S., secs. 1408, 1409.
Pay.
R. S., sec. 1556.

*Provided, however*, That nothing herein contained shall be so construed as to authorize any increase of pay for any time prior to the passage of this Act.

Pay not increased prior to this act.

## MEDICAL CORPS.

Sec.
426. Chief of Bureau.
Medical Corps, number of.
1369. Appointments in, how made.
1370. Appointment of assistant surgeons.
1371. Appointment of surgeons.
1372. Rank of assistant surgeon in case of delayed examination.
1373. Surgeon of the fleet.
1374. Duties of surgeon of the fleet.
1375. Details of medical officers to Bureau of Medicine and Surgery.
1411. Acting assistant surgeons.
1471. Rank and title of Chief of Bureau.
1473. Rank when retired.
1474. Rank of medical officers.
1481. Retired from age or length of service, rank.
1556. Pay.

SEC. 426. The chief of the Bureau of Medicine and Surgery shall be appointed from the list of the surgeons of the Navy.

Title 10.
Chief of Bureau.
See title Rank and Precedence, sec. 1471. July 5, 1862, s. 1, v. 12, p. 510.

*Note 1.*—Mates are petty officers. See 160 U. S., 598.
*Note 2.*—See Op., XI. p. 251, June 20, 1865, defining the status of mates and acting master's mates. Not warrant officers.
*Note 3.*—The law on this subject is found in Revised Statutes, secs. 1405, 1406, 1442-1465; 1491, 1882, Aug. 5, ch. 391, par. 4 (1 Supp. R. S., 377); 1883, Mar. 3, ch. 97, par. 5 (1 Supp. R. S., 401).

Aug. 5, 1882.

Medical corps; number of.
See title Rank and Precedence, sec. 1474. 22 Stat. L., 285; 19 A. G. Op., p. 169.

That the active list of the Medical Corps of the Navy shall consist of fifteen medical directors, fifty surgeons, and *ninety* assistant and *passed* assistant surgeons.

Appointments in, how made.
Apr. 21, 1806, s. 3, v. 2, p. 390.
Apr. 16, 1814, s. 5, v. 3, p. 125; May 24, 1828, s. 3, v. 4, p. 313. See notes under sec. 1378, Pay Corps.

SEC. 1369. All appointments in the Medical Corps shall be made by the President, by and with the advice and consent of the Senate.

Appointment of assistant surgeons.
May 24, 1828, s. 1, v. 4, p. 318.
Mar. 3, 1871, s. 5, v. 16, p. 586.

SEC. 1370. No person shall be appointed assistant surgeon until he has been examined and approved by a board of naval surgeons, designated by the Secretary of the Navy; nor who is under twenty-one or over twenty-six years of age.

Appointment of surgeons.
May 24, 1828, s. 1, v. 4, p. 313.
See note 1.

SEC. 1371. No person shall be appointed surgeon until he has served as an assistant surgeon at least two years, on board a public vessel of the United States at sea, nor until he has been examined and approved for such appointment, by a board of naval surgeons, designated by the Secretary of the Navy.

Rank of assistant surgeons in case of delayed examination.
Mar. 3, 1835, s. 1, v. 4, p. 757.

SEC. 1372. When any assistant surgeon was absent from the United States, on duty, at the time when others of his date were examined, he shall, if not rejected at a subsequent examination, be entitled to the same rank with them; and if, from any cause, his relative rank cannot be assigned to him, he shall retain his original position on the register.

Feb. 13, 1897.

29 Stat. L., 526.
Supp. R. S., vol. 7, p. 549.

*Be it enacted, etc.*, That passed assistant surgeons (2) now borne upon the Navy Register shall be commissioned as such by the President,

Navy.
Passed assistant surgeons to be commissioned.

—as of date of appointment.

such commissions to bear the dates upon which said passed assistant surgeons, respectively, received their appointments as such;

Promotion on examination.

and hereafter assistant surgeons shall be regularly promoted and commissioned as passed assistant surgeons, and passed assistant surgeons as surgeons, subject to such examinations as may be prescribed by the Secretary of the Navy:

Examinations temporarily postponed.

*Provided, however*, That no examination of passed assistant surgeons shall be ordered until the expiration of six

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*Note 1.*—The custom and practice of the Navy Department requiring competitive examination of assistant surgeons, and assigning them positions on the Navy Register in the order of relative merit as ascertained and reported by the board of examiners authorized by existing law and regulations, is not, under the present law, correct.

Having passed the necessary examination for promotion, the claim of * * * to be promoted according to seniority is, in my opinion, well founded. (Op., Feb. 25, 1881, Ames Case; Gen. Order 282.)

*Note 2.*—1882, Aug. 5, ch. 391, par. 3 (1 Supp. R. S., 376), is a substitute for R. S., § 1368, fixing the rank and number of the active list of the medical corps of the Navy.

R. S., §§ 1369–1375, prescribes their appointment, promotion, and duties; R. S., § 1474, their relative rank, and R. S., § 1556, their pay.

See also 1896, June 3, ch. 313, § 12, *ante*, p. 497, as to their right to practice medicine in the District of Columbia.

months from the passage of this act, during which time promotions shall be made as now provided by law.

Surgeon of the fleet. May 24, 1828, s. 2, v. 4, p. 313.

SEC. 1373. The President may designate among the surgeons in the service, and appoint to every fleet or squadron an experienced and intelligent surgeon, who shall be denominated "surgeon of the fleet," and shall be surgeon of the flag-ship.

Duties of surgeon of the fleet. May 24, 1828, s. 2, v. 4, p. 313.

SEC. 1374. The surgeon of the fleet shall, in addition to his duties as surgeon of the flag-ship, examine and approve all requisitions for medical and hospital stores for the squadron or fleet, and inspect their quality. He shall, in difficult cases, consult with the surgeons of the several ships, and he shall make, and transmit to the Navy Department, records of the character and treatment of diseases in the squadron or fleet.

Detail of medical officer to Bureau as assistant. July 16, 1862, s. 18, v. 12, p. 587; Feb. 27, 1877, v. 19, p. 244. See note 3.

SEC. 1375. A surgeon, assistant surgeon, or passed assistant surgeon, may be detailed as assistant to the Bureau of Medicine and Surgery, *who shall receive the highest shore-pay of his grade.*

Acting assistant surgeons. July 15, 1870, s. 13, v. 16, p. 334; Mar. 3, 1865, s. 6, v. 13, p. 539; Feb. 15, 1879, s. 2, v. 20, p. 295.

SEC. 1411. The Secretary of the Navy may appoint, for temporary service, such acting assistant surgeons as the exigencies of the service may require, *in case of war only,* who shall receive the compensation of assistant surgeons.

Title 15, chap. 4.

Rank and title of Chief of Bureau. Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1471. The chief of the Bureau of Medicine and Surgery * * * shall have the relative rank of commodore while holding said position, and shall have * * * the title of Surgeon-General. * * *

Retired from position of Chief of Bureau. Idem.

SEC. 1473. Officers who have been or who shall be retired from the position of chief of the Bureau of Medicine and Surgery, * * * by reason of age or length of service, shall have the relative rank of commodore.

Relative rank of medical officers. See same sec. "Rank and Precedence." Mar. 3, 1871, s. 5, v. 16, p. 535.

SEC. 1474. Officers of the Medical Corps on the active list of the Navy shall have relative rank as follows:

Medical directors, the relative rank of captain.

Medical inspectors, the relative rank of commander.

Surgeons, the relative rank of lieutenant-commander or lieutenant.

Passed assistant surgeons, the relative rank of lieutenant or master.

Lieutenant of the junior grade. (Act of March 3, 1883.)

Assistant surgeons, the relative rank of master or ensign.

Retired for age or length of service. Mar. 3, 1871, s. 11, v. 16, p. 537.

SEC. 1481. Officers of the Medical * * * Corps * * * who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and * * * who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of commodore.

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*Note 3.*—By the act of Feb. 27, 1877, section 1375 was to have the same effect as though the amendment (in *italics*) had been enacted therein.

Title 15, chap. 8.

SEC. 1556. Fleet-surgeons, * * * , four thousand four hundred dollars.

Pay of fleet surgeons.

Medical directors and inspectors.

Medical directors, medical inspectors, * * * , when on duty at sea, four thousand four hundred dollars.

When not at sea, the same as surgeons and paymasters, respectively.

Surgeons.

July 15, 1870, s. 3, v. 16, pp. 330, 331; Mar. 3, 1871, ss. 5, 6, v. 16, pp. 535, 536; Mar. 3, 1873, s. 1, v. 17, p. 555.

Surgeons, * * * , during the first five years after date of commission, when at sea, two thousand eight hundred dollars; on shore duty, two thousand four hundred dollars; on leave, or waiting orders, two thousand dollars; during the second five years after such date, when at sea, three thousand two hundred dollars; on shore duty, two thousand eight hundred dollars; on leave, or waiting orders, two thousand four hundred dollars; during the third five years after such date, when at sea, three thousand five hundred dollars; on shore duty, three thousand two hundred dollars; on leave, or waiting orders, two thousand six hundred dollars; during the fourth five years after such date, when at sea, three thousand seven hundred dollars; on shore duty, three thousand six hundred dollars; on leave, or waiting orders, two thousand eight hundred dollars; after twenty years from such date, when at sea, four thousand two hundred dollars; on shore duty, four thousand dollars; on leave, or waiting orders, three thousand dollars.

Passed assistant surgeons. See note 4.

Passed assistant surgeons, * * * , during the first five years after date of appointment, when at sea, two thousand dollars; on shore duty, one thousand eight hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; after five years from such date, when at sea, two thousand two hundred dollars; on shore duty, two thousand dollars; on leave, or waiting orders, one thousand seven hundred dollars.

Assistant surgeons.

Assistant surgeons, * * * , during the first five years after date of appointment, when at sea, one thousand seven hundred dollars; on shore duty, one thousand four hundred dollars; on leave, or waiting orders, one thousand dollars; on leave, or waiting ordery one thousand five hundred dollars; after five years from such date, when at sea, one thousand nine hundred dollars; on shore duty, one thousand six hundred dollars; on leave, or waiting orders, one thousand two hundred dollars.

Assistant surgeons qualified for promotion.

Assistant surgeons of three years' service, who have been found qualified for promotion by a medical board of examiners, the pay of passed assistant surgeons.

Supp. R.S., vol. 2, p. 517.

Surgeons specially appointed, etc. 1883, Mar. 3, ch. 97, par. 5 (1 Supp. R. S., 401).

That such surgeons in the Navy not in line of promotion as may have been appointed to that position in accordance with a special act of Congress for meritorious services during yellow fever epidemics shall have all the benefits of their previous service in the same manner as if said appointments were a reentry into the Navy.

*Note 4.*—The words "after date of appointment," and "from such date," sec. 1556, fixing the annual pay of passed assistant surgeons of the Navy, refer not to the original entry of the officer into the service as an assistant surgeon, but to the notification by the Secretary of the Navy that he has passed his examination for promotion to the grade of surgeon, and will thereafter, until such promotion, be considered as a passed assistant surgeon. A passed assistant surgeoncy is an office, and the notification of the Secretary of the Navy is a valid appointment to it. (United States v. Moore, Otto, 95, 760.)

SEC. 12. That this act shall not apply to commissioned surgeons of the United States Army, Navy, or Marine-Hospital Service, nor to regularly licensed physicians and surgeons in actual consultation from other States or Territories, nor to regularly licensed physicians and surgeons actually called from other States or Territories to attend specified cases in the District of Columbia, nor to the treatment of any case of actual emergency, nor to the practice of massage or the so-called Swedish movement cure, nor to the use of ordinary domestic remedies without fee, gift, or consideration of any kind.

The provisions of "An act to regulate the practice of medicine and surgery, etc., in the District of Columbia, of June 3, 1896, exempt surgeons of the Navy. Supp. R. S., vol. 2, p. 497. Exemptions.

That such surgeons in the Navy not in line of promotion as may have been appointed to that position in accordance with a special act of Congress for meritorious services during yellow fever epidemics shall have all the benefits of their previous service in the same manner as if said appointments were a reentry into the Navy.

June 10, 1896. 29 Stat. L., 361. 2 Supp., p. 517. Surgeons specially appointed. 1 Supp., p. 401.

## NAUTICAL ALMANAC.

Sec.
436. Superintendent, pay of.
—— Printing and sale.
Sec.
—— Civil employés.

SEC. 436. The Secretary of the Navy may place the supervision of the Nautical Almanac in charge of any officer or professor of mathematics in the Navy who is competent for that service. Such officer or professor, when so employed, shall be entitled to receive the shore-duty pay of his grade, and no other.

Title 10. Superintendent, pay of. Mar. 3, 1857, 3, v. 11, p. 246.

Of the Ephemeris and Nautical Almanac and of the papers supplementary thereto, one thousand five hundred copies; one hundred copies for the Senate, four hundred for the House, and one thousand for distribution or sale by the Navy Department. The five hundred copies printed for Congress, and the usual number shall be for the calendar year next following, and those for the Navy Department for the third year following. The Secretary of the Navy is also authorized to cause additional copies of the Ephemeris, and of the Nautical Almanacs extracted therefrom, to be printed for the public service and for sale to navigators and others: *Provided*, That all moneys received from sales of the Ephemeris and of the Nautical Almanacs shall be deposited in the Treasury and placed to the credit of the general fund for public printing.

Jan. 12, 1895. Nautical Almanac and Ephemeris.

*Proviso.* Sales.

## NAVAL ACADEMY—NAVAL CADETS.

Sec.
1483. Rank of graduates of the Academy.
1511. Where established.
1512. Title of students.
1513. Number of naval cadets.
Act July 26, 1894. Nomination of candidates.
1515. Examination of candidates.
1516. Second recommendation.
1517. Qualifications.
—— Traveling expenses.
1518. Appropriations, how applied.
1519. Naval cadets found deficient.
1520. Academic course.
1521. Promotion to midshipmen.
1522. Naval constructors and steam engineers.
—— Special course.
1526. Studies not to be pursued on Sunday.
1527. Storekeeper at the Academy.
1528. Professors of ethics, Spanish, and drawing.
1556. Pay of cadets, etc.
1577. Rations.
—— Prevention of hazing.
—— Board of Visitors.
—— Pay of civil officers.

Title 15, chap. 4.

Rank of graduates of Naval Academy.

May 23, 1872, s. 1, v. 17, p. 153.

See note 1.

SEC. 1483. Graduates of the Naval Academy shall take rank according to their proficiency as shown by their order of merit at the date of graduation.

Title 15, chap. 5.

Where established.

May 11, 1864, s. 4, v. 13, p. 85.

March 2, 1889.

25 Stat., L. 878.

Supp. R. S., p. 696-697.

Naval Academy.

Cadets of first class, fourth year, assigned to two separate divisions.

R. S., secs. 1511-1528.

See note 2.

See marine schools, title.

See Vessels of the Navy, Division I.

Line and Marine Corps division and engineer division.

SEC. 1511. The Naval Academy shall be established at Annapolis, in the State of Maryland.

That the Academic Board of the Naval Academy shall on or before the thirtieth day of September in each year separate the first class of naval cadets then commencing their fourth year into two divisions, as they may have shown special aptitude for the duties of the respective corps, in the proportion which the aggregate number of vacancies occurring in the preceding fiscal year ending on the thirtieth day of June in the lowest grades of commissioned officers of the line of the Navy and Marine Corps of the Navy shall bear to the number of vacancies to be supplied from the Academy occurring during the same period in the lowest grade of commissioned officers of the engineer corps of the Navy;

And the cadets so assigned to the line and Marine Corps division of the first class shall thereafter pursue a course of study arranged to fit them for service in the line of the Navy, and the cadets so assigned to the Engineer Corps division of the first class shall thereafter pursue a separate course of study arranged to fit them for service in the Engineer Corps of the Navy, and the cadets shall thereafter, and until final graduation, at the end of their six years' course, take rank by merit with those in the same division, according to the merit marks;

Appointments from divisions at graduation.

And from the final graduates of the line and Marine Corps division at the end of their six years' course, appoint-

*Note 1.*—The positions given the midshipmen on their final examination (secs. 1483 and 1521) can not be disturbed. (See Ops., XI, p. 158; XV, p. 637; XVI, p. 296; Court of Claims, X, p. 474; Op. Aug. 12, 1881.

See act Mar. 2, 1889.

*Note 2.*—Other statutes relating to the Naval Academy are as follows: 1874, Feb. 24, ch. 35, sec. 2, course of study for engineers; 1874, June 22, ch. 392, sec. 3, repeal of appointment of cadet engineers; 1874, June 23, ch. 453, punishment of hazing; 1877, Mar. 3, ch. 111, pay of cadets; 1878, June 17, ch. 260, number of cadets appointed; 1879, Feb. 14, ch. 68, par. 2, Board of Visitors; 1882, Aug. 5, ch. 391, pars. 1, 2, name, appointment, study, and discharge of naval cadets regulated; 1884, June 26, ch. 122, graduates to be commissioned ensigns; 1886, May 20, ch. 362, nature and effect of alcoholic drinks to be studied; 1886, Aug. 4, ch. 903, par. 2, no intoxicating liquors to be furnished Board of Visitors at Government expense.

ments shall be made hereafter as it shall be necessary to fill vacancies in the lowest grades of commissioned officers of the line of the Navy and Marine Corps; and the vacancies in the lowest grades of the commissioned officers of the Engineer Corps of the Navy shall be filled in like manner by appointments from the final graduates of the Engineer division at the end of their six years' course:

Aug. 5, 1882, ch. 391, par. 1, p. 376. June 26, 1884, ch. 122, p. 446.

*Provided*, That no greater number of appointments into the said lowest grades of commissioned officers shall be made each year than shall equal the number of vacancies which shall have occurred in the same grades during the fiscal year then current; such appointments to be made from the final graduates of the year, in the order of merit as determined by the Academic Board of the Naval Academy, the assignment to be made by the Secretary of the Navy upon the recommendation of the Academic Board at the conclusion of the fiscal year then current;

—not to exceed vacancies, etc., and to be in order of merit.

But nothing contained herein or in the naval appropriation act of August fifth, eighteen hundred and eighty-two, shall reduce the number of appointments of final graduates at the end of their six years course below twelve in each year to the line of the Navy, and not less than two shall be appointed annually to the Engineer Corps of the Navy, nor less than one annually to the Marine Corps; and if the number of vacancies in the lowest grades aforesaid, occurring in any year shall be greater than the number of final graduates of that year, the surplus vacancies shall be filled from the final graduates of following years, as they shall become available.

Reduction of appointments.

Filling vacancies.

Aug. 5, 1882.

22 Stat. L., 284.

SEC. 1512. [Superseded by act of August 5, 1882, as follows:] *Provided*, That hereafter there shall be no appointments of cadet-midshipmen or cadet-engineers at the Naval Academy, but in lieu thereof naval cadets shall be appointed from each Congressional district and at large, as now provided by law for cadet-midshipmen, and all the undergraduates at the Naval Academy shall hereafter be designated and called "naval cadets;" and from those who successfully complete the six years' course appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line and Engineer Corps of the Navy and of the Marine Corps: *And provided further*, That no greater number of appointments into these grades shall be made each year than shall equal the number of vacancies which has occurred in the same grades during the preceding year; such appointments to be made from the graduates of the year, at the conclusion of their six years' course, in the order of merit, as determined by the academic board of the Naval Academy; the assignment to the various corps to be made by the Secretary of the Navy upon the recommendation of the academic board. But nothing herein contained shall reduce the number of appointments from such graduates below ten in each year, nor deprive of such appointment any graduate who may complete the six years' course during the year eighteen hundred and eighty-two. And if there be a surplus of graduates, those who do not receive such appointment shall be given a certificate of

Title of students.

Naval cadets, name of, instead of cadet-midshipmen and cadet-engineers.

R. S., secs. 1512–1528.

Feb. 24, 1874, ch. 35, p. 4. June 17, 1878, ch. 260, p. 188. June 26, 1884, ch. 122, p. 446.

Mar. 2, 1889, ch. 396, and note, 546; 20 C. Cls., 226, 438; 116 U. S., 474, 483. Aug. 5, 1882, 22 Stat. L., p. 285.

graduation, an honorable discharge, and one year's sea-pay, as now provided by law for cadet-midshipmen; and so much of section fifteen hundred and twenty-one of the Revised Statutes as is inconsistent herewith is hereby repealed.

That any cadet whose position in his class entitles him to be retained in the service may, upon his own application, be honorably discharged at the end of four years' course at the Naval Academy, with a proper certificate of graduation.

Number of naval cadets.
Mar. 2, 1867, s. 8, v. 14, p. 517; July 15, 1870, s. 12, v. 16, p. 334; June 17, 1878, v. 20, p. 143; Aug. 5, 1882, 22 Stat. L., p. 285.
See note 3.

SEC. 1513. There shall be allowed at said Academy one *naval cadet* for every Member or Delegate of the House of Representatives, one for the District of Columbia, and ten appointed annually at large: *Provided, however*, That there shall not be at any time more in said Academy appointed at large than ten.

July 26, 1894.

Naval Academy.
Substitute for R. S., sec. 1514.
July 16, 1862, s. 11, v. 12, p. 585.
Naval Academy, notice of vacancy.
Nominations, how made.

That section fifteen hundred and fourteen, chapter five, title fifteen of the Revised Statutes of the United States, is hereby amended so that it shall hereafter read:

The Secretary of the Navy shall, as soon after the fifth of March in each year as possible, notify in writing each Member and Delegate of the House of Representatives of any vacancy that may exist in his district.

The nomination of a candidate to fill said vacancy shall be made upon the recommendation of the Member or Delegate, if such recommendation is made by the first day of July of that year;

Appointment to be from district where vacancy exists.

but if it is not made by that time, the Secretary of the Navy shall fill the vacancy by appointment of an actual resident of the district in which the vacancy exists, who shall have been for at least two years immediately preceding the date of his appointment an actual and bona fide resident of the district in which the vacancy exists and of the legal qualification under the law as now provided.

Candidates from D. C. and at large.

The candidate allowed for the District of Columbia, and all the candidates appointed at large, shall be selected by the President.

Feb. 12, 1895.

Naval Academy.
Appointment of cadets from districts not represented.

That every Representative or Delegate in Congress, whose district or Territory is now not represented at the Naval Academy by a cadet who was an actual resident of such district or Territory at the time of his appointment, shall be permitted and authorized to recommend a candidate for appointment as cadet at the Naval Academy of the United States, said recommendation to be made on or before the fourth day of March, eighteen hundred and ninety-five, and the Secretary of the Navy shall nominate such cadet so recommended for appointment to said Academy, subject to the qualifications now prescribed by law. Such cadets, when so appointed, shall be in addition to the cadets now allowed by law, and the sum of money appropriated by the Act entitled "An Act making appropria-

*Note 3.*—A joint resolution, approved July 25, 1868, v. 15, p. 261, authorizes the Secretary of the Navy to receive for instruction at the Naval Academy not exceeding six persons, to be designated by the Government of the Empire of Japan, provided that no expense shall thereby accrue to the United States; and that the Secretary of the Navy may, in the case of the said persons, modify or dispense with any provisions of the rules and regulations of the said Academy which circumstances may, in his opinion, render necessary or desirable.

tions for the naval service for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved July twenty-sixth, eighteen hundred and ninety-four, is hereby made available, and shall be applied to carry into effect this law.

Laws, 2d sess. 53d Cong., p. 137.

Appropriation available.

SEC. 1515. All candidates for admission into the Academy shall be examined according to such regulations and at such stated times as the Secretary of the Navy may prescribe. Candidates rejected at such examination shall not have the privilege of another examination for admission to the same class, unless recommended by the board of examiners.

Examination of candidates. July 16, 1862, s. 11, v. 12, p. 585. April 17, 1866, s. 5, v. 14, p. 38. See note 4.

SEC. 1516. When any candidate who has been nominated upon the recommendation of a Member or Delegate of the House of Representatives is found, upon examination, to be physically or mentally disqualified for admission, the Member or Delegate shall be notified to recommend another candidate, who shall be examined according to the provisions of the preceding section.

Second recommendation. July 16, 1862, s. 11, v. 12, p. 585; July 17, 1866, s. 5, v. 14, p. 38.

SEC. 1517. Candidates allowed for congressional districts, for Territories, and for the District of Columbia must be actual residents of the districts or Territories, respectively, from which they are nominated. And all candidates must, at the time of their examination for admission, be between the ages of fourteen and eighteen years, and physically sound, well formed, and of robust constitution.

Qualifications. July 14, 1862, s. 9, v. 12, p. 565; July 16, 1862, s. 11, v. 12, p. 585; April 1, 1864, s. 2, v. 13, p. 39. See note 5.

SEC. 2. That after the fourth day of March, eighteen hundred and eighty-nine, the minimum age of admission of cadets to the Academy shall be fifteen years and the maximum age twenty years.

Mar. 2, 1889.

Minimum age of admission 15 years and maximum 20.

R. S. sec. 1517.

SEC. 1518. No money appropriated for the support of the Naval Academy shall be applied to the support of any *naval cadet* appointed otherwise than in strict conformance with the provisions of this chapter.

Appropriations, how applied. See note 6. May 21, 1864, s. 1, v. 13, p. 84; Aug. 5, 1882, 22 Stat. L., p. 285.

SEC. 1519. *Naval cadets* found deficient at any examination shall not be continued at the Academy or in the service unless upon the recommendation of the academic board.

Cadet-midshipmen found deficient. July 16, 1862, s. 11, v. 12, p. 585; Aug. 5, 1882, 22 Stat. L., p. 285. See note 7.

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*Note 4.*—Section 1515 is to be read as if the dates fixed by the regulations of the Academy for the examination of candidates for admission were inserted therein; and hence by the existing law the season for recommendations and nominations of naval cadets begins after the 5th of March and expires on the 22d of September in each year. (Op., XVI, p. 621.) This opinion was given in the case of a Member whose candidates, sent down in June and September, failed, and he wished to send another in January following. It was held that no nomination could be made until after the 5th of March.

*Note 5.*—A candidate under fourteen or over eighteen years of age is not *between* the two ages, and can not be appointed. (Op., X, p. 315, July 29, 1862. For further discussion of the subject of appointments see Op., X, pp. 46, 495; Op., XVI, p. 621.)

*Note 6.*—The naval appropriation act of March 6, 1883, provides for the actual and necessary traveling expenses of naval cadets while proceeding from their homes to the Naval Academy for examination and *appointment* as caval cadets. Such expenses are not allowed to those not appointed.

See traveling expenses, title Pay and Allowances.

*Note 7.*—Under section 1519 the Secretary of the Navy has no right to continue at the Academy cadets found at any examination deficient in their *studies*, without the recommendation of the Academic Board. (Op., XV, p. 634.)

By statutory definition, cadets are not to be included, in general, in legislation confined to "officers" of the Navy. (*Idem.*)

Cadets, after the four years' course, are not entirely emancipated from probationary study; they are students at sea. (Op., XVI, p. 296.)

Academic course.
Mar. 3, 1873, s. 1, v. 17, p. 555; Aug. 5, 1882, 22 Stat. L., p. 285.
See note 8.

SEC. 1520. The academic course of *naval cadets* shall be six years.

Promotion to midshipmen.
July 15, 1870, s. 12, v. 16, p. 334.
See note 9.
See sec. 1512, and note under sec. 1483.

SEC. 1521. When cadet midshipmen shall have passed successfully the graduating examination at the Academy, they shall receive appointments as midshipmen and shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

June 26, 1884.
23 Stat. L., 60.
Supp. R. S., p. 446.
Graduates of Naval Academy to be ensigns.
R. S., secs. 1362, 1521. See title Rank and Precedence, sec. 1466. Aug. 5, 1882, ch. 391, pars. 1, 2; Mar. 2, 1889, ch. 396, and note.

That from and after the passage of this act all graduates of the Naval Academy who are assigned to the line of the Navy, on the successful completion of the six years course, shall be commissioned ensigns in the Navy.

Grade of junior ensigns abolished.
Mar. 3, 1883, ch. 97, par. 2, p. 401.

That the grade of junior ensign in the Navy is hereby abolished and the junior ensigns now on the list shall be commissioned ensigns in the Navy: *Provided*, That nothing in this act shall be so construed as to increase the number of officers in the Navy now allowed by law.

Repeal.

That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

July 26, 1894.
Vacancies, ensign and assistant engineer grades, how filled.

*Provided further*, That in order to fill vacancies that may exist in the grade of ensign in the Navy and in the grade of assistant engineer in the Navy, the Secretary of the Navy shall, in case the number of vacancies in either of such grades exceeds the number of naval cadets in the line division or in the engineer division of the class of naval cadets finally graduated in the year eighteen hundred and ninety-four, or in any one year thereafter, select a number equal to such excess from the final graduates of said class in the engineer division or in the line division, as the case may require, who shall be reported as proficient and be recommended thereto by the Academic Board, and such final graduates shall be appointed to fill vacancies in the grade of ensign in the Navy or in the grade of assistant engineer in the Navy, respectively,

How appointees to rank.

and the naval cadets so appointed to fill vacancies in such grades shall take rank in those respective grades next after the naval cadets appointed from the line division or from the engineer division, as the case may be, to fill vacancies in those grades, but among themselves according to merit as determined by the Academic Board. * * *

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*Note 8.*—Under the act of July 4, 1864, s. 5, v. 13, p. 393, the academic course of cadet engineers was two years, and by the act of 3 Mar., 1873, s. 1, v. 17, p. 555 the course of instruction was made four years, including "two years of service in naval steamers, in addition to the period at the Naval Academy now provided by law." An act approved Feb. 24, 1874, s. 2, v. 18, p. 17, provided that after the 30th of June, 1874, the course of instruction at the Naval Academy for cadet engineers should be four years, instead of two, the provision to first apply to the class of cadet engineers entering the Academy in the year 1874, and to all subsequent classes.

*Note 9.*—This section has been entirely altered by the act of August 5, 1882, as given in section 1512 above, and the act of Mar. 3, 1883, under "Line officers," changing the title of midshipman to that of ensign.

SEC. 1522. The Secretary of the Navy is authorized to make provision, by regulations issued by him, for educating at the Naval Academy, as naval constructors or steam engineers, such midshipmen and others as may show a peculiar aptitude therefor. He may, for this purpose, form a separate class at the Academy, to be styled cadet engineers, or otherwise afford to such persons all proper facilities for such a scientific mechanical education as will fit them for said professions.

Constructors and steam engineers.
July 4, 1864, s. 1, v. 13, p. 393.
See note 10.
See title "Naval constructors," sec. 1522.

That any cadet whose position in his class entitles him to be retained in the service may, upon his own application, be honorably discharged at the end of four years' course at the Naval Academy, with a proper certificate of graduation.

Aug. 5, 1882.
When cadets may be voluntarily discharged, with certificate of graduation.

That the Secretary of the Navy may prescribe a special course of study and training at home or abroad for any naval cadet.

Special course of study may be prescribed.

That so much of the act entitled "An act to authorize the Secretary of the Navy to provide for the education of naval constructors and steam-engineers, and for other purposes, approved July fourth, eighteen hundred and sixty-four," as provides that cadet-engineers, not to exceed fifty in number, shall be appointed by the Secretary of the Navy, is hereby repealed.

Mar. 2, 1889, ch. 396, s. 3. Supp. R. S. 1874-1891, p. 696.
Cadet-engineers, not to be appointed.
R. S., s. 1523.
1874, Feb. 24, ch. 35, s. 2, p. 4.
1882, Aug. 5, ch. 391, par. 1, p. 376.
See note 11.

And every naval cadet or cadet engineer who has heretofore graduated or may hereafter graduate from the Naval Academy, and who has been or may hereafter be commissioned, within six months after such graduation, an officer in the Navy or Marine Corps of the United States, under the laws appointing such graduate to the Navy or Marine Corps, shall be allowed the pay of the grade in which he may be so commissioned from the date he takes rank as stated in his commission to the date of qualification and acceptance of his commission:

Mar. 3, 1893.
27 Stat. L., 715.
Supp. R. S., 1892-1895, p. 130.
Naval Academy graduates, if commissioned in six months, to be paid from date of rank.
R. S., secs. 1521, 1522.
Aug. 5, 1882, ch. 391, pars. 1, 2 (1 Supp. R. S., 376).
June 26, 1884, ch. 122 (1 Supp. R. S., 446).
Mar. 2, 1889, ch. 396 (1 Supp. R. S., 696).
See note 12.

SEC. 1526. The Secretary of the Navy shall arrange the course of studies and the order of recitations at the Naval Academy so that the students in said institution shall not be required to pursue their studies on Sunday.

Title 15, chap. 4.
Studies not to be pursued on Sunday.
July 15, 1870, s. 21, v. 16, p. 319.

SEC. 1527. The store-keeper at the Naval Academy shall be detailed from the Paymaster's Corps, and shall have authority, with the approval of the Secretary of the Navy, to procure clothing and other necessaries for the *naval*

Store-keeper at the Academy.
Mar. 2, 1867, s. 4, v. 14, p. 516; Aug. 5, 1882.

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*Note 10.*—While so much of this section as authorized the formation of a class to be styled *cadet engineers* is in effect repealed by the act of Aug. 5, 1882, sec. 1512, there still seems to be authority left to educate at the Academy persons for constructors at least.

*Note 11.*—The provisions of 1864, ch. 252, herein referred to, are incorporated into Revised Statutes, sec. 1527.

*Note 12.*—A similar provision relative to graduates of the Military Academy is made by 1886, Dec. 20, ch. 2 (1 Supp. R. S., 517). The laws relating to the commission of naval cadets are referred to in the margin. The laws relating to the Naval Academy are reviewed in a note to 1889, Mar. 2, ch. 396 (1 Supp. R. S., 696).

*cadets* in the same manner as supplies are furnished to the Navy, to be issued under such regulations as may be prescribed by the Secretary of the Navy.

Professors of ethics, Spanish, and drawing.
May 21, 1864, s. 3, v. 13, p. 85.
See note 13.
See also note same section, title Professors of Mathematics.

SEC. 1528. Three professors of mathematics shall be assigned to duty at the Naval Academy, one as professor of ethics and English studies, one as professor of the Spanish language, and one as professor of drawing.

Title 15, chap. 8.

Pay of cadet midshipmen.
July 15, 1870, s. 3, v. 16, p. 330; Mar. 3, 1877, v. 19, p. 390; July 16, 1862, s. 15, v. 12, p. 586.

SEC. 1556. * * * Cadet midshipmen, five hundred dollars. *During such period of their course of instruction as they shall be at sea in other than practice-ships, not exceeding nine hundred and fifty dollars.*

Aug. 5, 1882.

Pay of naval cadets.
Aug. 5, 1882.
See note 14.

That the pay of naval cadets shall be that now allowed by law to cadet midshipmen.

Title 15, chap. 8.

Rations.
July 28, 1866, s. 8, v. 14, p. 322; Feb. 28, 1867, s. 2, v. 14, p. 416; Aug. 5, 1882, P. E., p. 285. See note 15.

SEC. 1577. Midshipmen and *naval cadets* in the Navy shall be entitled to one ration, or to commutation therefor.

June 23, 1874.

Hazing at Naval Academy.

Offenders to be court-martialed.

Cadet found guilty to be dismissed.

To be forever ineligible to reappointment.
June 23, 1874, v. 18, p. 203; Aug. 5, 1882, s. 1.
See note 16.

In all cases when it shall come to the knowledge of the superintendent of the Naval Academy, at Annapolis, that any *naval cadet* has been guilty of the offense commonly known as hazing, it shall be the duty of said superintendent to order a court-martial, composed of not less than three commissioned officers, who shall minutely examine into all the facts and circumstances of the case and make a finding thereon; and any *naval cadet* found guilty of said offense by said court shall, upon recommendation of said court be dismissed; and such finding, when approved by said superintendent, shall be final; and the cadet so dismissed from said Naval Academy shall be forever ineligible to reappointment to said Naval Academy.

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*Note 13.*—The three professors of mathematics for duty at the Naval Academy (ethics and English, Spanish, and drawing) should be commissioned as professors of mathematics, under this section, after passing the examination required by act of January 21, 1881. (Op. May 18, 1881, McVeagh.)

*Note 14.*—Cadet engineers who complete the six years' course, pass successfully, and are subsequently commissioned assistant engineers, to fill vacancies, are entitled to the pay of the latter grade from the date they take rank therein, when subsequent to the vacancies they are appointed to fill. The words "any officer of the Navy," act June 22, 1874, chap. 392, sec. 1, comprehend cadet engineers. They are officers within the meaning of sections 1557 and 1558, and of a class subject to examination, sec. 1562. The signification of the word "officer," art. 36, sec. 1624, as given in Op., XV, p. 635, has reference to the sense in which that word is used in said article, between which and the statutory provisions herein cited there is no connection. (Op. Apr. 10, 1882, Brewster.)

*Note 15.*—Although the title of midshipman has been abolished or merged in that of ensign, constituting a junior grade thereof, the latter continue entitled to a ration.

*Note 16.*—Finding approved by the superintendent final. Secretary of the Navy no power to review it—he can only proceed to execute the sentence. (Taft, Beale's Case, Nov. 20, 1876 [not printed].) Designed to cut off a cadet found guilty of the offense, and sentence approved by superintendent, from all chance of reinstatement or reappointment. Must seek relief from Congress. Advises against pardon. (Op., XV, Mar. 15, 1876, p. 80.)

When found guilty of hazing, the court must *recommend* dismissal, instead of

That the Secretary of the Navy shall have power to convene general courts-martial for the trial of naval cadets, subject to the same limitations and conditions now existing as to other general courts-martial, and to approve the proceedings and execute the sentences of such courts, except the sentences of suspension and dismissal, which, after having been approved by the superintendent, shall not be carried into effect until confirmed by the President:

Mar. 2, 1895.
28 Stat. L., 825.
Courts-martial for cadets.
R. S., sec. 1624, arts. 36, 53.

There shall be appointed every year, in the following manner, a Board of Visitors, to attend the annual examination of the Academy: Seven persons shall be appointed by the President, and two Senators and three Members of the House of Representatives shall be designated as visitors by the Vice-President or President pro tempore of the Senate and the Speaker of the House of Representatives, respectively, at the session of Congress next preceding such examination. Each member of said board shall receive not exceeding eight cents per mile traveled by the most direct route from his residence to Annapolis, and eight cents per mile for each mile from said place to his residence on returning.

Feb. 14, 1879.
V. 20, Stat. L., p. 284.
Board of Visitors.

## NAVAL CONSTRUCTORS.

Sec.
425. Chief of Bureau.
1402. Number and appointment.
1404. Duty.
1471. Chief Constructor.
1477. Rank.
1481. Rank on retirement.
1522. Education of, at Academy.
1556. Pay.

SEC. 425. The Chief of the Bureau of Construction and Repair shall be appointed from the list of officers of the Navy, not below the grade of commander, and shall be a skillful naval constructor.

Title 10.
Chief of Bureau.
July 5, 1862, s. 1, v. 12, p. 510.
See sec. 1471.
See sec. 1481 as to the rank of constructors when retired from age or length of service.

SEC. 1402. The President, by and with the advice and consent of the Senate, may appoint naval constructors, who shall have rank and pay as officers of the Navy.

Title 15, chap. 1.
Number, appointment of, etc.
July 25, 1866, s. 7, v. 14, p. 223; Mar. 3, 1871, s. 9, v. 16, p. 536.
See notes under sec. 1378, Pay Corps.

SEC. 1404. Naval constructors may be required to perform duty at any navy-yard or other station.

Duty.
Mar. 3, 1845, s. 2, v. 5, p. 794.

SEC. 1471. The Chief of the Bureau of * * * Construction and Repair shall have the relative rank of commodore while holding said position, and shall have the title * * * of Chief Constructor.

Title 15, chap. 4.
Chief Constructor.
Mar. 3, 1871, s. 12, v. 16, p. 537.

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sentencing to be dismissed. (Cases of Garrett and others, sentences set aside by Secretary of the Navy, June 9, 1877, O. L. B., p. 8.)

Art. 36, sec. 1624, does not extend to cadets at the Naval Academy. They may be dismissed for misconduct without trial by court-martial. For hazing they must be tried. (Op., XV, p. 634, July 10, 1877.)

Mar. 3, 1893.

27 Stat. L., 715. Supp. R. S., 1892–1895, p. 130. Naval Constructors eligible as Chief of Bureau of Construction and Repair. R. S., secs. 419–421, 423, 1471–1473.

And any Naval Constructor having the rank of Captain, Commander or Lieutenant Commander shall be eligible as Chief of the Bureau of Construction and Repair. * * *

Rank. Mar. 3, 1871, s. 9, v. 16, p. 536. See same sec., Rank and Precedence.

SEC. 1477. Of the naval constructors, two shall have the relative rank of captain, three of commander, and all others that of lieutenant-commander or lieutenant. * * *

Rank on retirement. Mar. 3, 1871, s. 11, v. 16, p. 537.

SEC. 1481. * * * Constructors who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and * * * who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of commodore.

Title 15, chap. 5.

Education at Naval Academy. July 4, 1864, s. 1, v. 13, p. 393; Aug. 5, 1882. See Title "Naval Academy, sec. 1522.

SEC. 1522. The Secretary of the Navy is authorized to make provision, by regulations issued by him, for educating at the Naval Academy, as naval constructors * * * such *naval cadets* and others as may show a peculiar aptitude therefor. He may, for this purpose, form a separate class at the academy, * * * or otherwise afford to such persons all proper facilities for such a scientific mechanical education as will fit them for said profession.

Title 15, chap. 8.

Pay. July 15, 1870, s. 3, v. 16, p. 331.

SEC. 1556. * * * Naval constructors, during the first five years after date of appointment, when on duty, three thousand two hundred dollars; on leave, or waiting orders, two thousand two hundred dollars; during the second five years after such date, when on duty, three thousand four hundred dollars; on leave, or waiting orders, two thousand four hundred dollars; during the third five years after such date, when on duty, three thousand seven hundred dollars; on leave, or waiting orders, two thousand seven hundred dollars; during the fourth five years after such date, when on duty, four thousand dollars; on leave, or waiting orders, three thousand dollars; after twenty years from such date, when on duty, four thousand two hundred dollars; on leave, or waiting orders, three thousand two hundred dollars.

## ASSISTANT NAVAL CONSTRUCTORS.

Sec.
1403. Appointment of.
1477. Rank.
1556. Pay.

Title 15, chap. 4.

Assistant naval constructors. July 4, 1864, s. 2, v. 13, p. 393. See sec. 1522, Naval Constructors.

SEC. 1403. Cadet-engineers who are graduated with credit in the scientific and mechanical class of the Naval Academy may, upon the recommendation of the academic board, be immediately appointed as assistant naval constructors.

Rank. Mar. 3, 1871, s. 9, v. 16, p. 536. See same sec., Rank and Precedence.

SEC. 1477. * * * Assistant naval constructors shall have the relative rank of lieutenant or master.

Lieutenant of the junior grade.

SEC. 1556. * * * Assistant naval constructors, during the first four years after date of appointment, when on duty, two thousand dollars; on leave, or waiting orders, one thousand five hundred dollars; during the second four years after such date, when on duty, two thousand two hundred dollars; on leave, or waiting orders, one thousand seven hundred dollars; after eight years from such date, when on duty, two thousand six hundred dollars; on leave, or waiting orders, one thousand nine hundred dollars.

Title 15, chap. 8.

Pay.
July 15, 1870, s. 3, v. 16, p. 331.

## NAVAL OBSERVATORY.

Sec.
434. Pay of superintendent.
435. Meridians adopted.
1401. Professors' duties.
—— Assistant astronomers and clerk.
—— Purchase of new site.

SEC. 434. The officer of the Navy employed as superintendent of the Naval Observatory at Washington shall be entitled to receive the shore duty pay of his grade, and no other.

Title 10.

Pay of superintendent.
Mar. 3, 1865, v. 13, p. 533.

SEC. 435. The meridian of the Observatory at Washington shall be adopted and used as the American meridian for all astronomical purposes, and the meridian of Greenwich shall be adopted for all nautical purposes.

Meridians.
Sept. 28, 1850, s. 1, v. 9, p. 515.

SEC. 1401. Professors of mathematics shall perform such duties as may be assigned them by order of the Secretary of the Navy, at the * * * Naval Observatory. * * *

Title 15, chap. 1.

Duties of professors.
Aug. 3, 1848, s. 12, v. 9, p. 272.

## NAVAL STOREKEEPERS.

Sec.
1413. Storekeepers at navy-yards.
1414. Storekeepers on foreign stations.
1415. Storekeeper's bond.
1438. Officers to act as storekeepers on foreign stations.
1439. Bonds of.
Sec.
1527. Storekeeper at the Academy.
1567. Officers serving as storekeepers on foreign stations.
1568. Civilians, storekeepers on foreign stations.

SEC. 1413. The President, by and with the advice and consent of the Senate, may appoint * * * a naval storekeeper at each of the navy-yards where such officers may be necessary.

Title 15, chap. 1.

Storekeepers at navy-yards.
Mar. 2, 1867, s. 1, v. 14, p. 490; June 17, 1868, s. 1, v. 15, p. 69.

SEC. 1414. The Secretary of the Navy may appoint citizens who are not officers of the Navy to be store-keepers on foreign stations, when suitable officers of the Navy cannot be ordered on such service, or when, in his opinion, the public interest will be thereby promoted.

Storekeepers on foreign stations.
June 17, 1844, s. 1, v. 5, p. 700; Mar. 7, 1847, s. 3, v. 9, p. 172. Sec. 1568.

SEC. 1415. Every person who is appointed store-keeper under the provisions of the preceding section shall be required to give a bond, in such amount as may be fixed by the Secretary of the Navy, for the faithful performance of his duty.

Storekeeper's bond.
Idem.

SEC. 1438. The Secretary of the Navy shall order a suitable commissioned or warrant officer of the Navy, except in the case provided in section fourteen hundred and fourteen, to take charge of the naval stores for foreign squadrons at each of the foreign stations where such stores may be deposited, and where a store-keeper may be necessary.

Title 15, chap. 2.

Officers to act as storekeepers on foreign stations.
Idem.
See sec. 1567.

Bonds of.
June 17, 1844, s. 1, v. 5, p. 700.

SEC. 1439. Every officer so acting as store-keeper on a foreign station shall be required to give a bond, in such amount as may be fixed by the Secretary of the Navy, for the faithful performance of his duty.

Title 15, chap. 5.

Storekeeper at the Academy.
Mar. 2, 1867; s. 4, v. 14, p. 516; Aug. 5, 1882.

SEC. 1527. The store-keeper at the Naval Academy shall be detailed from the Paymasters' Corps, and shall have authority, with the approval of the Secretary of the Navy, to procure clothing and other necessaries for the *naval cadets* in the same manner as supplies are furnished to the Navy, to be issued under such regulations as may be prescribed by the Secretary of the Navy.

Title 15, chap. 8.

Pay of officers serving as store-keepers on foreign stations.
June 17, 1844, s. 1, v. 5, p. 700.

SEC. 1567. Officers who are ordered to take charge of naval stores for foreign squadrons, in the place of naval store-keepers, shall be entitled to receive, while so employed, the shore-duty pay of their grades; and when the same is less than fifteen hundred dollars a year, they may be allowed compensation, including such shore-duty pay, at a rate not exceeding fifteen hundred dollars a year.

Pay of civilians, storekeepers on foreign stations.
June 17, 1844, s. 1, v. 5, p. 700; Mar. 3, 1847, s. 3, v. 9, p. 172.

SEC. 1568. Civilians appointed as store-keepers on foreign stations shall receive compensation for such services, at a rate not exceeding fifteen hundred dollars a year.

## NAVY-YARDS AND STATIONS.


Sec.
355. Title to land to be purchased.
1413. Civil engineers and storekeepers.
1416. Civil officers at yards may be discontinued.
1542. Commandants of navy-yards.
1543. Master workmen.
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Act Aug. 7, 1882. Training station, Coasters Harbor Island.
Act Aug. 5, 1882. Closing the yards.


Title 8.

Title to land to be purchased by the United States.
Sept. 11, 1841, v. 5, p. 468.
See sec. 1838.

SEC. 355. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.

Title 15, chap. 1.

Civil engineers and storekeepers at navy-yards.
Mar. 2, 1867, s. 1, v. 14, p. 490; June 17, 1868, s. 1, v. 15, p. 69. See 1415, Naval storekeepers.

SEC. 1413. The President, by and with the advice and consent of the Senate, may appoint a civil engineer and a naval store-keeper at each of the navy-yards where such officers may be necessary.

Discontinuance of civil officers.
Aug. 10, 1846, s. 1, v. 9, p. 93.

SEC. 1416. The Secretary of the Navy is authorized, when in his opinion the public interest will permit it, to discontinue the office or employment of any measurer and inspector of timber, clerk of the yard, clerk of the commandant, clerk of the store-keeper, clerk of the naval constructor, and the keeper of the magazine employed at any navy-yard, and to require the duties of the keeper of the magazine to be performed by gunners.

Title 15, chap. 6.

Selection of commandants.
Aug. 2, 1861, v. 12, p. 285; July 5, 1862, s. 2, v. 12, p. 510.

SEC. 1542. The President may select the commandants of the several navy-yards from officers not below the grade of commander.

Selection of master workmen.
June 17, 1868, s. 1, v. 15, p. 69.

SEC. 1543. The persons employed at the several navy-yards to superintend the mechanical departments, and heretofore known as master mechanics, master carpenters, master joiners, master blacksmiths, master boiler-makers, master sail-makers, master plumbers, master painters, master calkers, master masons, master boat-builders, master spar-makers, master block-makers, master laborers, and the superintendents of rope-walks shall be men skilled in their several duties and appointed from civil life, and shall not be appointed from the officers of the Navy.

Selection of laborers.
May 23, 1872, s. 1, v. 17, p. 146.
See R. S., sec. 1662, and Justices Op., 1st met. (Mass.) 580.

SEC. 1544. Laborers shall be employed in the several navy-yards by the proper officers in charge with reference to skill and efficiency, and without regard to other considerations.

Salaries; per diem compensation.
July 14, 1862, s. 1, v. 12, p. 564.
See note 1.

SEC. 1545. Salaries shall not be paid to any employés in any of the navy-yards, except those who are designated in the estimates. All other persons shall receive a per diem compensation for the time during which they may be actually employed.

Political contributions.
Mar. 2, 1867, s. 3, v. 14, p. 492.
See under Ex. Departments, act Jan. 16, 1883, Division III.

SEC. 1546. No officer or employé of the Government shall require or request any working man in any navy-yard to contribute or pay any money for political purposes, nor shall any working man be removed or discharged for political opinion; and any officer or employé of the Government who shall offend against the provisions of this section shall be dismissed from the service of the United States.

*Note 1.*—By the acts of July 28, 1870, R. S. D. C., sec. 902, and January 31, 1879, v. 20, p. 277, the 1st day of January, the 22d day of February, the 4th day of July, the 25th day of December, and any day appointed or recommended by the President of the United States as a day of fast or thanksgiving, shall be holidays in the District of Columbia. By act of January 31, 1879, 20 Stat., 277, act of June 18, 1888, 25 Stat. L., 185, and act of June 28, 1894, 28 Stat. L., 96, Inauguration Day, Decoration Day, and Labor Day are also holidays in the District of Columbia. See sec. 5, Department Duties.

Title 22.

Assent of States to purchase of lands for forts, etc.
Apr. 28, 1828, s. 2, v. 4, p. 264.

SEC. 1838. The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, without such consent having been obtained.

Title 43.

Fuel.
Sept. 28, 1850, s. 1, v. 9, p. 513.

SEC. 3728. * * * In purchasing fuel for the Navy, or for naval stations and yards, the Secretary of the Navy shall have power to discriminate and purchase, in such manner as he may deem proper, that kind of fuel which is best adapted to the purpose for which it is to be used.*

Restriction on purchase of land.
May 1, 1820, s. 7, v. 3, p. 568.

SEC. 3736. No land shall be purchased on account of the United States, except under a law authorizing such purchase.

Eight hours a day's labor.
June 25, 1868, v. 15, p. 77. 19 A.G. Op., p. 685.
See this section under Contracts, Division I, and sec. 3689, under Appropriations, Division III.

SEC. 3738. Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the Government of the United States.

Aug. 1, 1892.

27 Stat. L., 340.
Supp. R.S. 1892-'95, p. 62.
Hours of labor limited to eight for laborers and mechanics on Government work.
See note 2.

That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontracter whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.

Punishment for violation by officer or contractor.

That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon conviction be punished by a fine not to exceed one thousand dollars or by imprisonment for not more then six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

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Prior eight-hour laws.

*Note 2.*—By R. S., sec. 3738, "Eight hours shall constitute a day's work for all laborers, workmen and mechanics who may be employed by or on behalf of the Government of the United States." Decisions construing this provision are found in 94 U. S., 400; 96 U. S., 421. 1888, Mar. 30, ch. 47, par. 2 (1 Supp. R. S., 582), directs the rigid enforcement of the eight-hour law in the Government Printing Office. 1888, May 24, ch. 308 (1 Supp. R. S., 587), makes eight hours a day's work for letter carriers, with a provision for extra pay in case of employment a greater number of hours. For decisions under this act see 148 U. S., 124, 134. For construction of the act in the text see opinion of the Attorney-General, published in General Orders, No. 61, Headquarters of the Army, Adjutant-General's Office, Sept. 6, 1892. For review of "labor legislation," see 1888, June 13, ch. 389 (1 Supp. R. S., 590).

The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act.

Existing contracts not affected.

That * * * * the rate of wages of the employés in the navy-yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards, to be determined by the commandants of the navy-yards, subject to the approval and revision of the Secretary of the Navy.

July 16, 1862.

Rate of wages and hours of labor.

Dec. 12, 1861, s. 8, v. 12, p. 330; July 8, 1862, v. 12, p. 587.

See note 3.

SEC. 5385. Every person who, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is under the jurisdiction of the United States, or on the site of any light-house, or other needful building belonging to the United States, the site whereof is under their jurisdiction, willfully and maliciously burns any dwelling-house or mansion-house, or any store, barn, stable, or other building, parcel of any dwelling or mansion-house, shall suffer death.

Title 70, chap. 3.

Arson of dwelling-house within a fort, etc.

Mar. 3, 1825, s. 1, v. 4, p. 115.

SEC. 5386. Every person who, in any of the places mentioned in the preceding section, maliciously sets fire to, or burns, any arsenal, armory, magazine, rope-walk, ship-house, warehouse, block-house, or barrack, or any store-house, barn, or stable, not parcel of a dwelling-house, or any other building not mentioned in such section, or any vessel built, or begun to be built, or repairing, or any light-house, or beacon, or any timber, cables, rigging, or other materials for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than ten years.

Arson of armory, arsenal, etc.

Idem, s. 2.

SEC. 5387. Every person who maliciously sets on fire, or burns, or otherwise destroys, any vessel of war of the United States, afloat on the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, shall suffer death.

Arson of vessel of war.

Idem, s. 11, p. 117.

No increase of the force at any navy-yard shall be made at any time within sixty days next before any election to take place for President of the United States, or member of Congress, except when the Secretary of the Navy shall certify that the needs of the public service make such increase necessary at that time, which certificate shall be immediately published when made.

June 30, 1876.

19 Stat. L., 65; Supp. R. S., p. 109.

Prohibition on increase of force.

June 30, 1876, v. 19, p. 65.

See also under Secretaries and Clerks.

Training Station, Coasters' Harbor Island, Rhode Island: to enable the naval war college to be conducted at said island up to January first, eighteen hundred and eighty-nine: *Provided*, That the Secretary of the Navy is hereby authorized to consolidate and place under one command

Sept. 7, 1888.

25 Stat. L., 458.

Consolidation of Torpedo Station and Naval War College.

*Note 3.*—This act is omitted from the Revised Statutes, but has been always recognized as governing the rates of wages, also the hours of labor until the passage of the eight-hour law.

the torpedo station and the naval war college at Newport, Rhode Island, after said date.

## PAY CORPS.

(See also ACCOUNTS and DISBURSING OFFICERS, Division III.)


Sec.
425. Chief Bureau of Provisions and Clothing.
1376. Pay Corps, number of.
1378. Appointments, how made.
1379. Qualifications of assistant paymasters.
1380. Order of promotion.
1381. Acting appointments on ships at sea.
1382. Paymaster of the fleet.
1383. Bonds.
1384. New bonds.
1385. Bond not affected by new commission.
1386. Clerks, when allowed.
1387. Clerks, when not allowed.
1388. Clerks of passed assistant and assistant paymasters.
1389. Loans to officers by paymasters.
1432. Commanding officers not required to act as paymasters.
1471. Rank Paymaster-General.
1475. Rank generally.
1481. Rank of retired officers.
1527. Storekeeper at Naval Academy.
1556. Pay.
1564. Vacancies occurring at sea.


Title 10.

July 5, 1862, s. 1, v. 12, p. 510.

See secs. 1471 and 1481. Title changed to Bureau of Supplies and Accounts.

SEC. 425. The Chief of the Bureau of Provisions and Clothing shall be appointed from the list of paymasters of the Navy of not less than ten years' standing.

Title 15, chap. 1.

Pay Corps, number of.

July 15, 1870, s. 11, v. 16, p. 334; Mar. 3, 1871, s. 6, v. 16, p. 536; Aug. 5, 1882.

SEC. 1376. The active list of the Pay Corps of the Navy shall consist of thirteen pay directors, thirteen pay inspectors, *forty* paymasters, *twenty* passed assistant paymasters, and *ten* assistant paymasters.

Appointments, how made.

Mar. 30, 1812, s. 6, v. 2, p. 699; June 22, 1860, s. 3, v. 12, p. 83; July 17, 1861, s. 1, v. 12, p. 258; May 3, 1866; s. 1, v. 14, p. 43. See note 1.

SEC. 1378. All appointments in the Pay Corps shall be made by the President, by and with the advice and consent of the Senate.

Qualifications of assistant paymasters.

July 17, 1861, s. 2, v. 12, p. 258.

SEC. 1379. No person shall be appointed assistant paymaster who is, at the time of such appointment, less than twenty-one or more than twenty-six years of age; nor until his physical, mental, and moral qualifications have been examined and approved by a board of paymasters appointed by the Secretary of the Navy, and according to such regulations as he may prescribe.

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See sec. 1378.

*Note 1.*—Appointments to office can be made only by the Executive branch of the Government in the manner provided by the Constitution (Art. II, § 2), and not by Congressional enactment.—C. C., XV, 151, Wood's case.

See Medical Corps and Naval Constructions, Division I.

It is necessary that the President should nominate, the Senate advise and consent, and that, in pursuance of such nomination and confirmation the appointment should actually be made. The nomination and confirmation do not divest the President of the power to withhold the appointment.—Op. IV, 31, 218. The appointment of a commissioned officer is not perfected, and is entirely within the power of the President until the commission is issued.—Op. IX, 297; XIII, 44; XIV, 344, C. C. V., 97.

When a commission has been signed by the President the appointment is complete, and the commission is complete when the seal of the United States has been affixed.—1 Cranch, Curtis' edition, 377, Marbury's case.

See also under Civil Service, Division III.

The Senate can not originate an appointment; its constitutional action is confined to a simple affirmation or rejection of the nomination, and it fails when they disagree. May suggest limitations or conditions, but can not vary the nomination. No appointment can be made except on the President's nomination agreed to without qualification or alteration.—Op., III, 189.

When a person appointed to an office refuses to accept the same, the successor is nominated in the place of the person who has declined, and not in place of the person who had been previously in office.—1 Cranch, Curtis' edition, 377.

Where an officer was of lawful age when nominated but was over age when confirmed, his commission can be issued to him. The Senate could have arrested it.—Op. X, 308, Bates, July 1, 1862.

SEC. 1380. Passed assistant paymasters shall be regularly promoted and commissioned from assistant paymasters, and paymasters from passed assistant paymasters; subject to such examinations as may be prescribed by the Secretary of the Navy.

Order of promotion. July 17, 1861, s. 5, v. 12, p. 258; May 3, 1866, s. 1, v. 14, p. 43. See Mar. 3, 1883, under Promotion.

SEC. 1381. When the office of paymaster or assistant paymaster becomes vacant, by death or otherwise, in ships at sea, or on foreign stations, or on the Pacific coast of the United States, the senior officer present may make an acting appointment of any fit person, who shall perform the duties thereof until another paymaster or assistant paymaster shall report for duty, and shall be entitled to receive the pay of such grade while so acting.

Acting appointments on ships at sea. July 17, 1861, s. 4, v. 12, p. 258. See sec. 1564.

SEC. 1382. The President may designate among the paymasters in the service, and appoint to every fleet or squadron a paymaster, who shall be denominated "paymaster of the fleet."

Paymasters of the fleet. May 24, 1828, s. 2, v. 4, p. 313; Apr. 21, 1864, s. 7, v. 13, p. 54.

SEC. 1383. Every paymaster, passed assistant paymaster, and assistant paymaster shall, before entering on the duties of his office, give bond, with two or more sufficient sureties, to be approved by the Secretary of the Navy, for the faithful performance thereof. Paymasters shall give bonds in the sum of twenty-five thousand dollars, passed assistant paymasters in the sum of fifteen thousand dollars, and assistant paymasters in the sum of ten thousand dollars.

Bonds. Mar. 30, 1812, s. 6, v. 2, p. 699; Mar. 1, 1817, s. 1, v. 3, p. 350; June 22, 1860, s. 3, v. 12, p. 83; July 17, 1861, s. 5, v. 12, p. 258; July 14, 1862, s. 1, v. 12, p. 575; May 3, 1866, s. 2, v. 14, p. 43. 19 A. G. Op., p. 175.

SEC. 1384. Officers of the Pay Corps shall give new bonds with sufficient sureties, whenever required to do so by the Secretary of the Navy.

New bonds. Aug. 26, 1842, s. 4, v. 5, p. 535.

Hereafter all bonds of the Treasurer of the United States, collectors of internal revenue, collectors, naval officers, surveyors, and other officers of the customs, either as such officers or as disbursing officers of the Treasury, bonds of the Secretary of the Senate, Clerk of the House of Representatives, and the Sergeant-at-Arms of the House of Representatives, and all such bonds now on file in the office of the Comptroller of the Treasury, shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in regard to such bonds, as the successor of the (15) Commissioner of Customs and First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury.

Mar. 2, 1895. 28 Stat. L., 764; Supp. vol. 2, p. 418. Bonds to be filed with Secretary of the Treasury

Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

Official bonds to be examined every two years.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary.

—to be renewed every four years.

—or oftener.

—renewal waived, when.

In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor:

Liability not affected.

*Provided*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States:

—to continue until appointment etc., of successor.

*Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal.

Bond not affected by a new commission.
Mar. 3, 1871, s. 6, v. 16, p. 536.
See note 2.

SEC. 1385. The issuing of a new appointment and commission to any officer of the Pay Corps shall not affect or annul any existing bond, but the same shall remain in force, and apply to such new appointment and commission.

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*Note 2.*—An appointment by the President to the end of the next session of Congress is not continued by a new appointment and commission by and with the advice and consent of the Senate. The latter is a distinct appointment, and requires a new bond. Sureties on the first not released on account of failure of the Senate to confirm the second. (United States *v.* Kilpatrick, 9 Wheaton, 720; United States *v.* Spencer, 2d McLean, 265; Op., IV, p. 30, May 20, 1842.)

A bond is confined in its obligatory force to acts done whilst a commission has a legal continuance. (Op., XV, p. 214, cites 9 Wheaton, 734.)

A bond, to be accepted by the Government, ought to be executed by the obligees and not by their attorneys. (Op., IX, p. 128, Nov. 5, 1857.)

The Supreme Court has repeatedly decided that the sureties of a bonded officer are only responsible for the faithful performance of his duties for the legal term of his appointment. (Op., XI, p. 286, July 11, 1865.)

Bonds cover not merely duties imposed by existing law, but duties belonging to and naturally connected with the office, imposed by subsequent law, provided that the new duties have relation to such office. (United States *v.* Sanger, 15 Wallace, p. 112.)

A paymaster's bond takes effect from the date of its approval by the Secretary of the Navy. (See Op., XIV, p. 7, and 19 Howard p. 73, as to when bonds go into effect.) Under sec. 1560, R. S., the pay of a bonded officer of the Navy commences on the day of the approval by the proper authority of his bond.

Duties imposed on an officer different in their nature from those which he was required to perform at the time his official bond was given do not render it void as an undertaking for the faithful performance of those which he at first assumed. (Otto, 97, p. 584.)

Judgment can not be rendered beyond the penalty to be discharged on the payment of the sum actually due. Can not exceed the penalty with interest from the breach. (United States *v.* Picketts, 2 Cranch, C. C., 553; Farrar *v.* United States, 5 Peters, 373.)

GENERAL INSTRUCTIONS.

A bond must bear date even with or prior to that of the affidavits of sureties and the certificate as to their sufficiency.

Seals of wafer or wax must be attached where indicated on the bond, opposite the places for the signatures of the principal and the sureties.

Two or more witnesses are required to each signature.

The sufficiency of the sureties must be certified to by a judge or clerk of a United States court or by a United States attorney, preferably for the district in which such sureties reside.

Pay officers will be careful to avoid erasures or alterations in any portion of the bond. The form should be neatly filled and the signatures legibly written.

INDIVIDUAL SURETIES.

A bond on which the sureties are individuals must be signed by not less than two sureties, one of whom, at least, must qualify in a sum, over and above all exemptions, debts, and legal liabilities, not less than the full amount of the bond; if there are but two sureties, the second must also qualify in like amount; or in lieu of a second surety for the whole amount, two or more individuals will be accepted, provided the aggregate amount for which they qualify be not less than the full amount of the bond. Each surety must make affidavit stating the value of his or her property over and above all exemptions, debts, and legal liabilities. In case a woman is offered as surety it should be stated whether she is single, married, or a widow, and if married or a widow an additional certificate will be required to the effect that such surety holds her property in her own right, and is competent under the laws of the State in which she resides to bind herself as surety in such case. The wife of the principal will not be accepted as surety.

CORPORATIONS AS SURETIES.

Under the provisions of the act approved August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain

SEC. 1386. Paymasters of the fleet, paymasters on vessels having complements of more than one hundred and seventy-five persons, on supply-steamers, store-vessels, and receiving-ships, paymasters at stations and at the Naval Academy, and paymasters detailed at stations as inspectors of provisions and clothing, shall each be allowed a clerk.

Clerks, when allowed. July 14, 1862, s. 3, v. 12, p. 565; May 26, 1864, v. 13, p. 92.

SEC. 1387. No paymaster shall be allowed a clerk in a vessel having the complement of one hundred and seventy-five persons or less, excepting in supply-steamers and store-vessels.

Clerks, when not allowed. May 26, 1864, v. 13, p. 92.

SEC. 1388. Passed assistant paymasters and assistant paymasters attached to vessels of war shall be allowed clerks, if clerks would be allowed by law to paymasters so attached.

Clerks of passed assistant and assistant paymasters. Mar. 3, 1863, s. 5, v. 12, p. 818.

SEC. 1389. It shall not be lawful for any paymaster, passed assistant paymaster, or assistant paymaster, to advance or loan, under any pretense whatever, to any officer in the naval service, any sum of money, public or private, or any credit, or any article or commodity whatever.

Loans to officers by paymasters. Aug. 26, 1842, s. 6, v. 5, p. 536; June 22, 1860, s. 3, v. 12, p. 83.

SEC. 1432. No commanding officer of any vessel of the Navy shall be required to perform the duties of a paymaster, passed assistant paymaster, or assistant paymaster.

Title 15, chap. 2.

Commanding officers not to act as paymasters. July 17, 1861, s. 4, v. 12, p. 258.

SEC. 1471. The Chief of the Bureau of *Supplies and Accounts* shall have the relative rank of commodore while holding said position, and shall have the title of paymaster-general.

Title 15, chap. 4.

Rank. Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1475. Officers of the Pay Corps on the active list of the Navy shall have relative rank as follows:

See Title "Rank and precedence," sec. 1475.

Pay directors, the relative rank of captain.

Pay inspectors, the relative rank of commander.

Paymasters, the relative rank of lieutenant-commander or lieutenant.

Passed assistant paymasters, the relative rank of lieutenant or master.

Lieutenant of the junior grade. Mar. 3, 1871, s. 6, v. 16, p. 536.

Assistant paymasters, the relative rank of master or ensign.

SEC. 1481. Officers of the * * * Pay Corps * * * who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of Commodore; * * *

Mar. 3, 1871, s. 11, v. 16, p. 256.

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corporations to be accepted as surety thereon," a surety or guaranty company, duly certified by the Attorney-General as having complied with the requirements of said act, and by him authorized to do business thereunder, and having a duly appointed agent in the District of Columbia, will be accepted as sole surety on a bond. Such company must file with the Department a copy of the letter of the Attorney-General authorizing it to do business under the act approved August 13, 1894, duly authenticated by the seal of the Department of Justice; a copy, certified to under the seal of the supreme court of the District of Columbia, of its appointment of an agent or attorney in said District, unless the above-mentioned letter of the Attorney-General shows the appointment of such agent; and a certified copy of its charter or articles of incorporation, and of so much of its by-laws as is necessary to show what officer or officers are authorized to execute bonds or enter into other obligations in its behalf.

A company appearing as surety on a bond shall attach to said bond a copy of the letter of the Attorney-General authorizing it to do business, properly certified to, and, when said bond has been accepted by the Department, the company appearing as surety thereon is required to submit quarterly statements of its financial condition in the months of January, April, July, and October, signed and sworn to by its president and secretary, and to submit statements giving the names of its officers as they are elected from time to time.

and who have been or who shall be retired at the age of sixty-two years before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of Commodore.

Title 15, chap. 5.

Storekeeper at the Academy. Mar. 2, 1867, s. 4, v. 14, p. 516; Aug. 5, 1882.

SEC. 1527. The store-keeper at the Naval Academy shall be detailed from the Paymaster's Corps, and shall have authority, with the approval of the Secretary of the Navy, to procure clothing and other necessaries for the *naval cadets* in the same manner as supplies are furnished to the Navy, to be issued under such regulation as may be prescribed by the Secretary of the Navy.

Title 15, chap. 8.

Pay of fleet paymasters. July 15, 1870, s. 3, v. 16, p. 330. 18 A. G. Op., p. 156.

SEC. 1556. * * * Fleet paymasters, * * * four thousand four hundred dollars.

Pay directors and inspectors. July 15, 1870, s. 3, v. 16, p. 331; Mar. 3, 1871, ss. 5, 6, v. 16, pp. 535, 536; Mar. 3, 1873, s. 1, v. 17, p. 555.

* * * Pay directors and pay inspectors, * * * when on duty at sea, four thousand four hundred dollars. When not at sea, the same as * * * paymasters.

Paymasters.

* * * Paymasters, during the first five years after date of commission, when at sea, two thousand eight hundred dollars; on shore duty, two thousand four hundred dollars; on leave, or waiting orders, two thousand dollars; during the second five years after such date, when at sea, three thousand two hundred dollars; on shore duty, two thousand eight hundred dollars; on leave, or waiting orders, two thousand four hundred dollars; during the third five years after such date, when at sea, three thousand five hundred dollars; on shore duty, three thousand two hundred dollars; on leave, or waiting orders, two thousand six hundred dollars; during the fourth five years after such date, when at sea, three thousand seven hundred dollars; on shore duty, three thousand six hundred dollars; on leave, or waiting orders, two thousand eight hundred dollars; after twenty years from such date, when at sea, four thousand two hundred dollars; on shore duty, four thousand dollars; on leave, or waiting orders, three thousand dollars.

Passed assistant paymasters.

* * * Passed assistant paymasters, * * * during the first five years after date of appointment, when at sea, two thousand dollars; on shore duty, one thousand eight hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; after five years from such date, when at sea, two thousand two hundred dollars; on shore duty, two thousand dollars; on leave, or waiting orders, one thousand seven hundred dollars.

Assistant paymasters. July 15, 1870, s. 3, v. 16, p. 330.

* * * Assistant paymasters, * * * during the first five years after date of appointment, when at sea, one thousand seven hundred dollars; on shore duty, one thousand four hundred dollars; on leave, or waiting orders, one thousand dollars; after five years from such date, when at sea, one thousand nine hundred dollars; on shore duty,

one thousand six hundred dollars; on leave, or waiting orders, one thousand two hundred dollars.

Person acting as paymaster when office vacant in ship at sea.

July 17, 1861, s. 4, v. 12, p. 258.

SEC. 1564. Any person performing the duties of paymaster, acting assistant paymaster, or assistant paymaster, in a ship at sea, or on a foreign station, or on the Pacific coast of the United States, by appointment of the senior officer present, in case of vacancy of such office, in accordance with the provisions of section thirteen hundred and eighty-one, and not otherwise, shall be entitled to receive the pay of such grade while so acting.

## PAY AND ALLOWANCES.

### PAY (*active, retired, and furlough*); EXTRA PAY; ALLOWANCES; TRAVELING EXPENSES.

#### PAY, ACTIVE AND RETIRED.


Sec.
1556. Pay of officers on active list.
1557. Furlough pay.
1558. No additional allowances except as herein specified.
1559. Volunteer service.
1560. Commencement of pay, original entry.
1561. Commencement of pay of promoted officers.
1562. In cases of delayed examinations.
—— Commencement of.
1564. Acting as paymaster.
1565. Chiefs of bureaus.
1567. Officers serving as storekeepers on foreign stations.
1568. Civilians storekeepers on foreign stations.
1569. Of enlisted men.
1570. Additional to firemen, etc.
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1573. Bounty pay for reenlisting.
1574. When vessels are wrecked.
1575. When taken by an enemy.
1576. Assignment of pay.
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1589. Of certain rear-admirals, retired.
1590. Third assistant engineers, retired. (Grade abolished.)
1591. Retired pay not increased by promotion.
1592. Retired officers on active duty.
1593. Retired officers on furlough.
4688. Allowances on Coast Survey.


Title 15, chap. 8.

See note 1.

SEC. 1556. The commissioned officers and warrant officers on the active list of the Navy of the United States, and the

*Note 1.*—Pay does not include rations or subsistence. (Op., II, 420, 593.) The word "pay" in acts of Congress concerning compensation of officers of the Army, Navy, and Marine Corps does not embrace the emoluments or allowances which are given by law in the absence of a clearly expressed intention to that effect. ("Levant" Case Op., X, 284.) The word "emolument," in military statutes, includes every allowance or perquisite annexed to an office for the benefit of the officer, and by way of compensation for services. Quarters are so given, and whether in money or in kind, are none the less an emolument. Pay and emoluments include quarters. (Op., IX, 284.) "Compensation" is equivalent to the words "pay" or "salary;" does not include rations nor extra expenses. (Op., II, 593; III, 152.)

It is within the authority of Congress to *reduce* the pay or allowances of officers and soldiers at any time during their period of service or enlistment. It can not be done by Executive authority or military authority; nor can a soldier's pay be *withheld* except in pursuance of law or sentence. (Winthrop, 366.)

Where an act of Congress fixes the compensation of an officer of the Government it can neither be enlarged nor diminished by any regulation or order of the President or of a Department, unless the power to make the same is given by act of Congress. (Goldsborough *v.* United States, Taney, 80.)

An officer or soldier can not be dismissed, discharged, or mustered out as of a prior date with the effect of depriving him of pay accrued between that date and the date of the actual discharge, etc. (Winthrop's Digest, 362.)

It is not within the power of the executive department, or any branch of it, to reduce the pay of an officer of the Army. (Winthrop, p. 366; quotes 23 Wallace, 416.)

So long as a person is in the Army or the Navy he is entitled to receive the pay belonging to the position, unless he has forfeited it in accordance with the provisions of law. (Op., XIII, 104, June 16, 1869; Op., XV, 175, Nov. 9, 1876.)

An officer is entitled to the salary allowed by law, and is not limited to the amount appropriated by Congress. (C. C., I, 380.)

An officer's "pay account" is not commercial paper, but in its legal aspect a mere receipt. If assigned, and payment made to the assignee, the name of the latter on the back does not make him responsible to the paymaster as an *indorser*, on ascertaining that the officer has already drawn his pay for the month. (Winthrop's Digest, 361.)

A paymaster on shore duty at a navy-yard is not entitled to pay for sea duty, though required by the Secretary of the Navy, in addition to his regular duties, to take charge of the accounts of certain ironclads temporarily at anchor off the yard and in commission for sea service. (Carpenter's Case, C. C., XV, 247.)

Graduated pay of officers. (See Op., X, p. 97, Aug. 13; p. 101, Aug. 19, 1861; and p. 326, Aug. 28, 1862.)

petty officers, seamen, ordinary seamen, firemen, coal-heavers, and employés in the Navy, shall be entitled to receive annual pay at the rates herein stated after their respective designations:

* * * * * * *

Rear-admirals.

Rear-admirals, when at sea, six thousand dollars; on shore duty, five thousand dollars; on leave, or waiting orders, four thousand dollars.

Commodores.

Commodores, when at sea, five thousand dollars; on shore duty, four thousand dollars; on leave, or waiting orders, three thousand dollars.

Captains.

Captains, when at sea, four thousand five hundred dollars; on shore duty, three thousand five hundred dollars; on leave, or waiting orders, two thousand eight hundred dollars.

Commanders.

Commanders, when at sea, three thousand five hundred dollars; on shore duty, three thousand dollars; on leave, or waiting orders, two thousand three hundred dollars.

Lieutenant-commanders.

Lieutenant-commanders, during the first four years after date of commission, when at sea, two thousand eight hundred dollars; on shore duty, two thousand four hundred dollars; on leave, or waiting orders, two thousand dollars; after four years from such date, when at sea, three thousand dollars; on shore duty, two thousand six hundred dollars; on leave, or waiting orders, two thousand two hundred dollars.

Lieutenants.

Lieutenants, during the first five years after date of commission, when at sea, two thousand four hundred dollars; on shore duty, two thousand dollars; on leave, or waiting orders, one thousand six hundred dollars; after five years from such date, when at sea, two thousand six hundred dollars; on shore duty, two thousand two hundred dollars; on leave, or waiting orders, one thousand eight hundred dollars. *Lieutenants, junior grade, the pay of masters.*

Masters. [*Grade abolished.*]

Masters, during the first five years after date of commission, when at sea, one thousand eight hundred dollars; on shore duty, one thousand five hundred dollars; on leave, or waiting orders, one thousand two hundred dollars; after five years from such date, when at sea, two thousand dollars; on shore duty, one thousand seven hundred dollars; on leave, or waiting orders, one thousand four hundred dollars.

Grades in the Navy.

C. C., v. 18, p. 347. McClure's case.

In the Navy there are grades for duty, for honor, and for pay, some by name and others by description. A lieutenant has a grade *of* his class and also a grade *in* his class upon which his pay is fixed, depending upon length of service. A lieutenant retired in the first five years of service because not recommended for promotion, is entitled to one-half of his sea-pay at the time of retirement, and no more.

Mar. 3, 1883.

22 Stat. L., 472. Masters in Navy to be styled lieutenants. R. S., secs. 1362, 1363, 1466, 1556. — to be a junior grade.

For the pay of * * * one hundred masters, the title of which grade is hereby changed to that of lieutenants.

And the masters now on the list shall constitute a junior grade of, and be commissioned as, lieutenants, having the

same rank and pay as now provided by law for masters, but promotion to and from said grade shall be by examination as provided by law for promotion to and from the grade of master,

And nothing herein contained shall be so construed as to increase the pay now allowed by law to any officer in the line or staff;

Pay not increased.

Ensigns, during the first five years after date of commission, when at sea, one thousand two hundred dollars; on shore duty, one thousand dollars; on leave, or waiting orders, eight hundred dollars; after five years from such date, when at sea, one thousand four hundred dollars; on shore duty, one thousand two hundred dollars; on leave, or waiting orders, one thousand dollars. *Ensigns, junior grade, the pay of midshipmen.*

Ensigns.

Midshipmen, after graduation, when at sea, one thousand dollars; on shore duty, eight hundred dollars; on leave, or waiting orders, six hundred dollars. [Grade abolished.]

Midshipmen. July 15, 1870, s. 3, v. 16, p. 330; Feb. 20, 1874, v. 18, p. 17; Mar. 3, 1883.

Ninety-one midshipmen, the title of which grade is hereby changed to that of ensign.

Midshipman to be styled ensign. R. S., secs. 1362, 1556.

And the midshipman now on the list shall constitute a junior grade of, and be commissioned as, ensigns, having the same rank and pay as now provided by law for midshipmen, but promotions to and from said grade shall be under the same regulations and requirements as now provided by law for promotion to and from the grade of midshipmen,

—to be a junior grade. June 26, 1884, ch. 122, p. 446.

And nothing herein contained shall be so construed as to increase the pay now allowed by law to any officer of said grade or of any officer of relative rank;

Pay not increased.

Cadet midshipmen [naval cadets], five hundred dollars; *during such period of their course of instruction as they shall be at sea in other than practice ships, shall each receive as annual pay not exceeding nine hundred and fifty dollars.*

Cadet midshipmen. July 15, 1870, s. 3, v. 16, p. 330; Mar. 3, 1877, v. 19, p. 390; Aug. 5, 1882.

Cadet engineers, before final academic examination, five hundred dollars; after final academic examination, and until warranted as assistant engineers, when on duty at sea, one thousand dollars; on shore duty, eight hundred dollars; on leave, or waiting orders, six hundred dollars. [Now styled naval cadets.]

Cadet engineers. July 4, 1864, s. 5, v. 13, p. 393; Mar. 3, 1865, s. 1, v. 13, p. 539; July 15, 1870, s. 3, v. 16, p. 330–332. See note 2.

And the said mates shall be entitled to receive annual pay at the rates following: when at sea, one thousand two hundred dollars; on shore duty, nine hundred dollars; on leave, or waiting orders, seven hundred dollars.

Mates. July 15, 1870, s. 3, v. 16, p. 330; Aug. 1, 1894, 28 Stat., 212.

Fleet-surgeons, fleet-paymasters, and fleet-engineers, four thousand four hundred dollars.

Fleet officers. July 15, 1870, s. 3, v. 16, p. 330.

Medical directors, medical inspectors, pay directors, and pay inspectors, and chief engineer, having the same rank as pay director and pay inspector, when on duty at sea, four thousand four hundred dollars.

Medical directors and inspectors, pay directors and inspectors, and chief engineer, of same rank, etc.

*Note 2.*—The act of Aug. 5, 1882, 22 Stat. L., p. 284, changing the title of all students at the Academy to naval cadets, gives them the pay cadet midshipmen were then receiving.

July 15, 1870, s. 3, v. 16, p. 331; Mar. 3, 1871, ss. 5, 6, v. 16, p. 535; Mar. 3, 1873, s. 1, v. 17, p. 555.

When not at sea, the same as surgeons and paymasters, respectively.

Surgeons, paymasters, and chief engineers.

Surgeons, paymasters, and chief engineers who have the same rank with paymasters, during the first five years after date of commission, when at sea, two thousand eight hundred dollars; on shore duty, two thousand four hundred dollars; on leave, or waiting orders, two thousand dollars; during the second five years after such date, when at sea, three thousand two hundred dollars; on shore duty, two thousand eight hundred dollars; on leave, or waiting orders, two thousand four hundred dollars; during the third five years after such date, when at sea, three thousand five hundred dollars; on shore duty, three thousand two hundred dollars; on leave, or waiting orders, two thousand six hundred dollars; during the fourth five years after such date, when at sea, three thousand seven hundred dollars; on shore duty, three thousand six hundred dollars; on leave, or waiting orders, two thousand eight hundred dollars; after twenty years from such date, when at sea, four thousand two hundred dollars; on shore duty, four thousand dollars; on leave, or waiting orders, three thousand dollars.

Passed assistant surgeons, paymasters, and engineers.

July 15, 1870, s. 3, v. 16, p. 330; Feb. 24, 1874, s. 1, v. 18, p. 17.

Passed assistant surgeons, passed assistant paymasters, and *passed* assistant engineers, during the first five years after date of appointment, when at sea, two thousand dollars; on shore duty, one thousand eight hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; after five years from such date, when at sea, two thousand two hundred dollars; on shore duty, two thousand dollars; on leave or waiting orders, one thousand seven hundred dollars.

Assistant surgeons, paymasters, and engineers.

July 15, 1870, s. 3, v. 16, p. 330; Feb. 24, 1874, s. 1, v. 18, p. 17.

Assistant surgeons, assistant paymasters, and *assistant* engineers, during the first five years after date of appointment, when at sea, one thousand seven hundred dollars; on shore duty, one thousand four hundred dollars; on leave, or waiting orders, one thousand dollars; after five years from such date, when at sea, one thousand nine hundred dollars; on shore duty, one thousand six hundred dollars; on leave, or waiting orders, one thousand two hundred dollars.

Assistant surgeons qualified for promotion.

Mar. 3, 1871, s. 5, v. 16, p. 535.

Assistant surgeons of three years' service, who have been found qualified for promotion by a medical board of examiners, the pay of passed assistant surgeons.

Naval constructors.

Naval constructors, during the first five years after date of appointment, when on duty, three thousand two hundred dollars; on leave, or waiting orders, two thousand two hundred dollars; during the second five years after such date, when on duty, three thousand four hundred dollars; on leave, or waiting orders, two thousand four hundred dollars; during the third five years after such date, when on duty, three thousand seven hundred dollars; on leave, or waiting orders, two thousand seven hundred dollars; during the fourth five years after such date, when on duty, four thousand dollars; on leave, or waiting orders, three thousand dollars; after twenty years from such date, when

on duty, four thousand two hundred dollars; on leave, or waiting orders, three thousand two hundred dollars.

Assistant naval constructors, during the first four years after date of appointment, when on duty, two thousand dollars; on leave, or waiting orders, one thousand five hundred dollars; during the second four years after such date, when on duty, two thousand two hundred dollars; on leave, or waiting orders, one thousand seven hundred dollars; after eight years from such date, when on duty, two thousand six hundred dollars; on leave, or waiting orders, one thousand nine hundred dollars.

Assistant naval constructors. July 15, 1870, s. 3, v. 16, p. 331.

Chaplains, during the first five years after date of commission, when at sea, two thousand five hundred dollars; on shore duty, two thousand dollars; on leave, or waiting orders, one thousand six hundred dollars; after five years from such date, when at sea, two thousand eight hundred dollars; on shore duty, two thousand three hundred dollars; on leave, or waiting orders, one thousand nine hundred dollars.

Chaplains. July 15, 1870, s. 3, v. 16, p. 331.

Professors of mathematics and civil engineers, during the first five years after date of appointment, when on duty, two thousand four hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; during the second five years after such date, when on duty, two thousand seven hundred dollars; on leave, or waiting orders, one thousand eight hundred dollars; during the third five years after such date, when on duty, three thousand dollars; on leave, or waiting orders, two thousand one hundred dollars; after fifteen years from such date, when on duty, three thousand five hundred dollars; on leave, or waiting orders, two thousand six hundred dollars.

Professors of mathematics and civil engineers. July 15, 1870, s. 3, v. 16, p. 331.

Boatswains, gunners, carpenters, and sail-makers, during the first three years after date of appointment, when at sea, one thousand two hundred dollars; on shore duty, nine hundred dollars; on leave, or waiting orders, seven hundred dollars; during the second three years after such date, when at sea, one thousand three hundred dollars; on shore duty, one thousand dollars; on leave, or waiting orders, eight hundred dollars; during the third three years after such date, when at sea, one thousand four hundred dollars; on shore duty, one thousand three hundred dollars; on leave, or waiting orders, nine hundred dollars; during the fourth three years after such date, when at sea, one thousand six hundred dollars; on shore duty, one thousand three hundred dollars; on leave, or waiting orders, one thousand dollars; after twelve years from such date, when at sea, one thousand eight hundred dollars; on shore duty, one thousand six hundred dollars; on leave, or waiting orders, one thousand two hundred dollars.

Warrant officers. Boatswains, gunners, carpenters, sailmakers. July 15, 1870, s. 3, v. 16, p. 332.

Secretary of the Naval Academy, one thousand eight hundred dollars.

July 15, 1870, s. 3, v. 16, p. 332.

First clerks to commandants of navy-yards, one thousand five hundred dollars.

Clerks to commandants of yards and stations.

Second clerks to commandants of navy-yards, one thousand two hundred dollars.

Clerk to commandant of navy-yard at Mare Island, one thousand eight hundred dollars.

Clerks to commandants of naval stations, one thousand five hundred dollars.

Clerks to paymasters.

Clerks to paymasters at navy-yards, Boston, New York, Philadelphia, and Washington, one thousand six hundred dollars; Kittery, Norfolk, and Pensacola, one thousand four hundred dollars; Mare Island, one thousand eight hundred dollars.

Clerks to paymasters, at other stations, one thousand three hundred dollars.

Clerks to paymasters of receiving-ships at Boston, New York, and Philadelphia, one thousand six hundred dollars; at Mare Island, one thousand eight hundred dollars; of other receiving-ships, one thousand three hundred dollars.

Clerks to paymasters on vessels of the first rate, one thousand three hundred dollars; on vessels of the second rate, one thousand one hundred dollars; on vessels of the third rate, and supply-vessels and store-ships, one thousand dollars.

Clerks to fleet paymasters, one thousand one hundred dollars.

Clerks to paymasters at the Naval Academy and Naval Asylum, one thousand three hundred dollars.

Clerks to inspectors.

July 15, 1870, s. 3, v. 16, p. 332.

Clerks to inspectors in charge of provisions and clothing, at navy-yards, Boston, New York, Philadelphia, and Washington, one thousand six hundred dollars; to inspectors in like charge at other inspections, one thousand three hundred dollars.

Shore duty, when allowed, and how ordered.

SEC. 2. That hereafter no officer of the Navy shall be employed on any shore duty, except in cases specially provided by law, unless the Secretary of the Navy shall determine that the employment of an officer on such duty is required by the public interests, and he shall so state in the order of employment, and also the duration of such service, beyond which time it shall not continue.

July 19, 1892.

27 Stat. L. 236. Supp., R. S., 1892-5, p. 40.

And the provisions of section two of the naval appropriation act approved March third, eighteen hundred and eighty-three, shall be so modified that hereafter orders of the Secretary of the Navy employing officers on shore duty shall state that such employment is required by the public interests, but need not state the duration of such service.

Shore duty orders need not state duration.

R. S., sec. 1556; Mar. 3, 1883, ch. 97, s. 2 (1 Supp. R. S., 402.

SEC. 1557. Officers on furlough shall receive only one-half of the pay to which they would have been entitled if on leave of absence.

Furlough pay.

Mar. 3, 1835, s. 1, v. 4, p. 756; Mar. 3, 1845, s. 6, v. 5, p. 794; June 1, 1860, s. 4, v. 12, p. 27. See sec. 1593.

No additional allowances, except as herein specified.

July 15, 1870, s. 4, v. 16, p. 332. See sec. 4088.

SEC. 1558. The pay prescribed in the two preceding sections shall be the full and entire compensation of the several officers therein named, and no additional allowance shall be made in favor of any of said officers on any account whatever, except as hereinafter provided.

Volunteer service.

SEC. 1559. When a volunteer naval service is authorized by law, the officers therein shall be entitled to receive the

same pay as officers of the same grades, respectively, in the Regular Navy.

July 16, 1862, s. 20, v. 12, p. 587.

SEC. 1560. The pay of an officer of the Navy, upon his original entry into the service, except where he is required to give an official bond, shall commence upon the date of his acceptance of his appointment; but where he is required to give such bond his pay shall commence upon the date of the approval of his bond by the proper authority.

Commencement of pay, original entry. July 15, 1870, s. 7, v. 16, p. 333.

SEC. 1561. When an officer is promoted in course to fill a vacancy, and is in the performance of the duties of the higher grade from the date he is to take rank, he may be allowed the increased pay from such date.

Commencement of pay of promoted officers. July 15, 1870, s. 7, v. 16, p. 333; June 5, 1872, s. 1, v. 17, p. 226. See June 22, 1874.

That on and after the passage of this act, any officer of the Navy who may be promoted in course to fill a vacancy in the next higher grade shall be entitled to the pay of the grade to which promoted from the date he takes rank therein, if it be subsequent to the vacancy he is appointed to fill. * * *

June 22, 1874.

Commencement of pay on promotion. June 22, 1874, v. 18, p. 191. See note under promotion. The act of June 22, 1874, here given, doubtless takes the place of sec. 1561.

SEC. 1562. If an officer of a class subject to examination before promotion shall be absent on duty, and by reason of such absence, or of other cause not involving fault on his part, shall not be examined at the time required by law or regulation, and shall afterward be examined and found qualified, the increased rate of pay to which his promotion would entitle him shall commence from the date when he would have been entitled to it had he been examined and found qualified at the time so required by law or regulation; and this rule shall apply to any cases of this description which may have heretofore occurred. And in every such case the period of service of the party, in the grade to which he was promoted, shall, in reference to the rate of his pay, be considered to have commenced from the date when he was so entitled to take rank.

In case of delayed examination. July 15, 1870, s. 7, v. 16, p. 333. See June 22, 1874.

SEC. 1564. Any person performing the duties of paymaster, acting assistant paymaster, or assistant paymaster, in a ship at sea, or on a foreign station, or on the Pacific coast of the United States, by appointment of the senior officer present, in case of vacancy of such office, in accordance with the provisions of section thirteen hundred and eighty-one, and not otherwise, shall be entitled to receive the pay of such grade while so acting.

Title 15, chap. 8.

Person acting as paymaster, when office vacant in ship at sea. July 17, 1861, s. 4, v. 12, p. 258. See sec. 1381, under Pay Corps.

See sec. 1381, under Pay Corps.

SEC. 1565. The pay of chiefs of Bureaus in the Navy Department shall be the highest pay of the grade to which they belong, but not below that of commodore.

Chiefs of Bureaus. Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1567. Officers who are ordered to take charge of naval stores for foreign squadrons, in the place of naval storekeepers, shall be entitled to receive, while so employed, the shore-duty pay of their grades; and when the same is less than fifteen hundred dollars a year, they may be allowed

Officers serving as storekeepers on foreign stations. June 17, 1844, s. 1, v. 5, p. 700.

compensation, including such shore-duty pay, at a rate not exceeding fifteen hundred dollars a year.

Civilians storekeepers on foreign stations.
June 17, 1844, s. 1, v. 5, p. 700; Mar. 3, 1847, s. 3, v. 9, p. 172.

SEC. 1568. Civilians appointed as storekeepers on foreign stations shall receive compensation for such services, at a rate not exceeding fifteen hundred dollars a year.

Pay of enlisted men.
Apr. 18, 1814, s. 1, v. 3, p. 136; Mar. 3, 1847, s. 4, v. 9, p. 173; July 1, 1864, s. 4, v. 13, p. 342; Mar. 3, 1865, s. 2, v. 13, p. 539.

SEC. 1569. The pay to be allowed to petty officers, excepting mates and the pay and bounty upon enlistment of seamen, ordinary seamen, firemen, and coal-heavers, in the naval service, shall be fixed by the President: *Provided*, That the whole sum be given for the whole pay aforesaid, and for the pay of officers, and for the said bounties upon enlistments shall not exceed, for any one year, the amount which may, in such year, be appropriated for such purposes.

Additional pay for serving as firemen and coal-heavers.
Mar. 1, 1869, s. 2, v. 15, p. 280.

SEC. 1570. Every seaman, ordinary seaman, or landsman who performs the duty of a fireman or coal-heaver on board of any vessel of war shall be entitled to receive, in addition to his compensation as seaman, ordinary seaman, or landsman, a compensation at the rate of thirty-three cents a day for the time he is employed as fireman or coal-heaver.

Detention beyond term of enlistment.
July 17, 1862, s. 17, v. 12, p. 610.
See sec. 1422, under Seamen.

SEC. 1572. All petty officers and persons of inferior ratings who are detained beyond the terms of service, according to the provisions of section fourteen hundred and twenty-two, or who, after the termination of their service, voluntarily re-enter, to serve until the return to an Atlantic port of the vessel to which they belong, and until their regular discharge therefrom, shall, for the time during which they are so detained or so serve beyond their original terms of service, receive an addition of one-fourth of their former pay.

Bounty pay for reenlisting.
Mar. 2, 1855, s. 2, v. 10, p. 627; June 7, 1864, v. 13, p. 120.

SEC. 1573. If any seaman, ordinary seaman, landsman, fireman, coal-heaver, or boy, being honorably discharged, shall re-enlist for three years, within three months thereafter, he shall, on presenting his honorable discharge, or on accounting in a satisfactory manner for its loss, be entitled to pay, during the said three months, equal to that to which he would have been entitled if he had been employed in actual service.

June 11, 1896.
29 Stat. L., 476.
Supp. R. S., vol. 2, p. 531.
Navy.
Honorable discharges and reenlistment bounty extended to all enlisted men.
R. S., §§ 1426, 1573.

That the benefits of honorable discharge as conferred by section fourteen hundred and twenty-six of the Revised Statutes, and of three months' pay upon reenlistment after honorable discharge as conferred by section fifteen hundred and seventy-three upon seamen, ordinary seamen, landsmen, firemen, coal heavers and boys, be, and the same are hereby, extended and made applicable to all enlisted persons in the Navy.

Paymasters' accounts for payments so made to be allowed.

And all accounts of paymasters who have made payments to enlisted men, not of the classes named in sections fourteen hundred and twenty-six and fifteen hundred and seventy-three, Revised Statutes, as if they had been included in the provisions of said sections, shall be allowed and passed by the accounting officers of the Treasury as if they had been included in said sections.

SEC. 1574. When the crew of any vessel of the United States are separated from such vessel, by means of her wreck, loss, or destruction, the pay and emoluments of such of the officers and men as shall appear to the Secretary of the Navy, by the sentence of a court-martial or court of inquiry, or by other satisfactory evidence, to have done their utmost to preserve her, and, after said wreck, loss, or destruction, to have behaved themselves agreeably to the discipline of the Navy, shall go on and be paid them until their discharge or death.

Crews of wrecked or lost vessels. July 17, 1862, s. 14, v. 12, p. 608.

SEC. 1575. The pay and emoluments of the officers and men of any vessel of the United States taken by an enemy who shall appear, by the sentence of a court-martial or otherwise, to have done their utmost to preserve and defend their vessel, and, after the taking thereof, to have behaved themselves agreeably to the discipline of the Navy, shall go on and be paid to them until their exchange, discharge, or death.

Crews of vessels taken by an enemy. Idem.

SEC. 1576. Every assignment of wages due to persons enlisted in the naval service, and all powers of attorney, or other authority to draw, receipt for, or transfer the same, shall be void, unless attested by the commanding officer and paymaster. The assignment of wages must specify the precise time when they commence.

Assignments of wages. June 30, 1864, s. 12, v. 13, p. 310.

SEC. 1588. The pay of all officers of the Navy who have been retired after forty-five years' service after reaching the age of sixteen years, or who have been or may be retired after forty years' service, upon their own application to the President, or on attaining the age of sixty-two years, or on account of incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure therein, shall, when not on active duty, be equal to seventy-five per centum of the sea-pay provided by this chapter for the grade or rank which they held, respectively, at the time of their retirement. The pay of all other officers on the retired list shall, when not on active duty, be equal to one-half the sea-pay provided by this chapter for the grade or rank held by them, respectively, at the time of their retirement.

Pay of retired officers. July 15, 1870, s. 5, v. 16, p. 333; Mar. 3, 1873, s. 1, v. 17, p. 555. See note 5, under "Retirement." The 16 years is clearly an error. See under sec. 1588, "Retirement.

SEC. 1589. Rear-admirals on the retired list of the Navy, who were retired as captains when the highest grade in the Navy was captain, at the age of sixty-two years, or after forty-five years' service, and who, after their retirement, were promoted to the grade of rear-admiral, and performed the duties of that grade in time of war, shall be considered as having been retired as rear-admirals.

Rear-admirals, retired. June 5, 1872, s. 1, v. 17, p. 226; Mar. 3, 1873, s. 1, v. 17, p. 555.

SEC. 1590. Officers who have been retired as third assistant engineers shall continue to receive pay at the rate of four hundred dollars a year.

Third assistant engineers, retired. Grade abolished July 15, 1870.

Mar. 3, 1859, s. 2, v. 11, p. 407; Aug. 3, 1861, s. 22, v. 12, p. 290; July 16, 1862, s. 20, v. 12, p. 587; Apr. 12, 1864, s. 7, v. 13, p. 54; July 15, 1870, s. 5, v. 16, p. 333.

Pay not increased by promotion.
July 15, 1870, s. 5, v. 15, p. 333; Mar. 2, 1867, s. 9, v. 14, p. 517.

SEC. 1591. No officer, heretofore or hereafter promoted upon the retired list, shall, in consequence of such promotion, be entitled to any increase of pay.

Pay on active duty.
Mar. 2, 1867, s. 9, v. 14, p. 517; June 1, 1860, s. 5, v. 12, p. 27.

SEC. 1592. Officers on the retired list, when on active duty, shall receive the full pay of their respective grades.

Officers retired on furlough pay.
Mar. 3, 1835, s. 1, v. 4, p. 756; Feb. 28, 1855, s. 2, v. 10, p. 616; Jan. 16, 1857, s. 1, v. 11, p. 154; Aug. 3, 1861, s. 23, v. 12, p. 291; July 28, 1866, s. 2, v. 14, p. 345; Jan. 30, 1875, v. 18, p. 504. See sec. 1594, Furlough.

SEC. 1593. Officers placed on the retired list, on furlough pay, shall receive only one-half of the pay to which they would have been entitled if on leave of absence on the active list.

Title 56.

Allowance for subsistence.
June 12, 1858, s. 1, v. 11, p. 319. See note 3.

SEC. 4688. The Secretary of the Treasury may make such allowances to the officers and men of the Army and Navy, while employed on Coast Survey service, for subsistence, in addition to their compensation, as he may deem necessary, not exceeding the sum authorized by the Treasury regulation of the eleventh day of May, eighteen hundred and forty-four.

## FURLOUGH AND FURLOUGH PAY.

Sec.
1442. Placing on furlough.
1557. Furlough pay.
1594. Transfer from furlough to retired pay.

Title 15, chap. 2.

Placing on furlough. See Articles for Government of the Navy, Miscellaneous Provisions, sec. 1442. Mar. 3, 1835 s. 1, v. 4, p. 756; Mar. 3, 1845, s. 6, v. 5, p. 794; Feb. 28, 1855, s. 3, v. 10, p. 617; June 1, 1860, s. 4, v. 12, p. 27. See note 2.

SEC. 1442. The Secretary of the Navy shall have authority to place on furlough any officer on the active list of the Navy.

Title 15, chap. 8.

Furlough pay.
Mar. 3, 1835, s. 1, v. 4, p. 756; Mar. 3, 1845, s. 6, v. 5, p. 794; June 1, 1860, s. 4, v. 12, p. 27.

SEC. 1557. Officers on furlough shall receive only one-half of the pay to which they would have been entitled if on leave of absence.

Transfer from furlough to retired pay.
Jan. 16, 1857, s. 3, v. 11, p. 154; July 16, 1862, s. 20, v. 12, p. 587. See note 1.

SEC. 1594. The President, by and with the advice and consent of the Senate, may transfer any officer on the retired list from the furlough to the retired-pay list.

*Note 1.*—When an officer is transferred, as authorized by this section, the causes for his retirement determine the rate of his pay under section 1588. An officer retired on furlough pay from causes not incident to the service can not be transferred to the 75 per cent pay list. If so transferred by nomination and confirmation, it would not be the duty of the accounting officer to pay him 75 per cent of sea pay. (Op., XVI, p. 23, Devens, May 29, 1878.)

*Note 2.*—An act approved January 30, 1875, v. 18, p. 304, allows difference of pay to certain officers, or their heirs, who were furloughed under the act of February 28, 1855, and subsequently restored to the active list.

*Note 3.*—Additional allowances for subsistence may be legally made to officers of the Army or Navy while employed on Coast Survey service. The word "pay" in section 4684, Coast Survey, Division III, refers to the pay proper of an officer. (Op., XV, p. 283, Devens, May 23, 1877.)

## EXTRA PAY, EXTRA SALARIES, ETC.

Sec.
170. To clerks prohibited.
1763. Double salaries.
1764. Extra services.
1765. Extra allowances.
2687. Apportionment of salaries.
3654. Extra compensation for disbursements.
Extra pay—Mexican war. Extra compensation to civil officers forbidden.

Title 4.

SEC. 170. No money shall be paid to any clerk employed in either Department at an annual salary, as compensation for extra services, unless expressly authorized by law.

Extra compensation to clerks prohibited.
June 17, 1844, s. 1, v. 5, pp. 681, 687; Mar. 3, 1863, s. 3, v. 10, pp. 209, 211; Feb. 28, 1867, res. 30, s. 2, v. 14, p. 569. See same sec., Civil Service, Division II.

Title 19.

SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

Double salaries.
Aug. 31, 1852, s. 18, v. 10, p. 100.
See June 20, 1874.

No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law;

July 31, 1894.
28 Stat. L., 162.
Supp., v. 2, p. 212.
Holding two offices by persons receiving $2,500 forbidden.
R.S., secs. 1763-1765. June 20, 1874, ch. 328, s. 3 1 Supp. R.S., 18.

but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate.

Retired officers excepted in certain cases.
R. S., secs. 1222, 1223, 1885, Mar. 3, ch. 338, s. 2 1 Supp. R. S., 481.
See notes 1 and 2.

SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

Extra services.
Aug. 26, 1842, s. 12, v. 5, p. 525.

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any

Extra allowances.
Mar. 3, 1839, s 3, v. 5, p. 349 Aug. 23, 1842, s. 2 v. 5, p. 510.
See note 3.

*Note 1.*—As to officers of the Army on the retired list holding other offices, see R. S., sec. 1223, 1875, Mar. 3, ch. 178 (1 Supp. R. S., 96); 1883, Mar. 3, ch. 134 (1 Supp. R. S., 412); 1891, Mar. 3. ch. 540, par. 3 (1 Supp. R. S., 925).

*Note 2.*—The act of July 31, 1894, was construed by the Attorney-General in an opinion rendered March 23, 1897, in which he held that the employment of a competent mathematician, who at the same time was a retired officer of the Navy, was not precluded by the act cited.

*Note 3.*—An officer who has been appointed to and is fully invested with two distinct offices may receive the compensation appropriated for each. Sections 1763, 1764, 1765 do not apply to such a case. It is for the appointing power to determine whether the party can properly and fully perform the duties of the two offices. (Op., XVI, 7, May 9, 1878. See also Op., XII, 459, on this subject; also under "Executive Departments," Division III.)

other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

Title 34, chap. 2.

Apportionment of compensation for part of a year's service. Feb. 11, 1846, s. 1, v. 9, p. 3; July 18, 1866, s. 34, v. 14, p. 186.

SEC. 2687. Collectors and all other officers of the customs, serving for a less period than a year, shall not be paid for the entire year, but shall be allowed in no case a greater than a pro rata of the maximum compensation of such officers respectively for the time only which they actually serve as such collectors or officers, whether the same be under one or more appointments, or before or after confirmation. And no collector or other officer shall, in any case, receive for his services, either as fees, salary, fines, penalties, forfeitures, or otherwise, for the time he may be in service, beyond the maximum pro rata rate provided by law. And this section shall be applied and enforced in regard to all officers, agents, and employés of the United States whomsoever, as well those whose compensation is determined by a commission on disbursements, not to exceed an annual maximum, as those paid by salary or otherwise.

Title 40.

Extra compensation for disbursements. Mar. 3, 1869, v. 15, p. 312. See Mar. 3, 1875.

SEC. 3654. No extra compensation exceeding one-eighth of one per centum shall in any case be allowed or paid to any officer, person, or corporation for disbursing moneys appropriated to the construction of any public building.

Mar. 3, 1875.

Mar. 3, 1875, v. 18, p. 415.

The provisions of the act of March 3, 1869 [sec. 3654], were intended and shall be deemed and held to limit the compensation to be allowed to any disbursing officer who disburses moneys appropriated for and expended in the construction of any public building as aforesaid to three-eighths of one per centum for said services.

June 20, 1874.

Extra compensation to civil officers prohibited. June 20, 1874, s. 3, v. 18, p. 85. See C. C., XVI, Warden's Case, and XV, p. 22.

That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the treasury or property of the United States beyond his salary or compensation allowed by law: *Provided*, That this shall not be construed to prevent the employment and payment of the Department of Justice of district atorneys as now allowed by law for the performance of services not covered by their salaries or fees.

[Extra pay to enlisted persons. See under Seamen.]

Extra pay, Mexican war.

An act approved February 19, 1879, chap. 90, v. 20, p. 316, provides for three months' extra pay (removing limitations contained in the act of July 19, 1848) to those who served in the Army, Navy, Marine Corps, and Revenue Marine in the war with Mexico.

## TRAVELING EXPENSES.

Sec.
Act June 16, 1874. Actual expenses.
Act June 30, 1876. Mileage.
1566. Allowance in foreign countries.
Act Jan. 18, 1875. Approval of Secretary required.
850. Clerks, etc., sent off as witnesses.
—— Traveling expenses of naval cadets.

June 16, 1874.

Traveling expenses.

Only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, and all allowances for mileages and trans-

portation in excess of the amount actually paid are hereby declared illegal; and no credit shall be allowed to any of the disbursing officers of the United States for payment or allowances in violation of this provision.

June 16, 1874, s. 1, v. 18, p. 72. [See June 30, 1876.] See note 1.

So much of the act of June 16, 1874 [*supra*], "as is applicable to officers of the Navy so engaged, is hereby repealed:

June 30, 1876.

"And the sum of eight cents per mile shall be allowed such officers, while so engaged, in lieu of their actual expenses."

Mileage to officers of the Navy. June 30, 1873, v. 19, p. 65. See note 2. See Aug. 5, 1882, 22 Stat. L., p. 289.

Officers of the Navy traveling abroad under orders hereafter issued shall travel by the most direct route, the occasion and necessity for such order to be certified by the officer issuing the same; and shall receive, in lieu of the mileage now allowed by law, only their actual and reasonable expenses, certified under their own signatures and approved by the Secretary of the Navy.

Aug. 5, 1882.

Travel abroad. Aug. 5, 1882, 22 Stat. L., p. 285.

SEC. 1566. * * * And an allowance may be made to officers traveling in foreign countries under orders, for expenses of transportation of baggage necessarily incurred. And no officer shall be paid mileage, except for travel actually performed at his own expense and in obedience to orders.

Title 15, chap. 8.

Allowance to officers traveling in foreign countries. See note 3. Mar. 3, 1835, s. 2, v. 4, p. 757; July 17, 1862, s. 7, v. 12, p. 595; July 15, 1870, s. 4, v. 16, p. 332. See Aug. 5, 1882.

For expenses and transportation of officers traveling under orders, * * *Provided*, That no allowance shall be made in the settlement of any account for traveling expenses unless the same be incurred on the order of the Secretary of the Navy, or the allowance be approved by him. * *

Jan. 18, 1875.

18 Stat. L., 297. Supp., R. S. p. 59.

Traveling expenses to be approved by Secretary. 1875, Mar. 3, ch. 133, par. 1, and note, p. 81. 1876, June 30. ch. 159, par. 1, p. 109. 1882, Aug. 5, ch. 391, par. 5, p. 367.

SEC. 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed.

Clerks, etc., sent away as witnesses. Feb. 26, 1863, s. 3, v. 10, p. 167. See note 4.

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*Note 1.*—An act of Feb. 22, 1875, exempted attorneys, marshals, and clerks of the United States courts; the clause of June 16, 1875, was repeated March 3, 1875, with like exemption.

*Note 2.*—See Op., XVI, 147; XV, 311; XIV, 590, 681, 683; IX, 261, 411, 417; XIII, 526, as to traveling expenses, residence, etc. No mileage is allowed for travel abroad.

*Note 3.*—An officer of the Navy traveling abroad under orders is entitled under the act of August 5, 1882, to reimbursement for hotel expenses incurred at a foreign port while awaiting, in obedience to his orders, the arrival of the ship to which he has been ordered. (Compt. Dec., Vol. III, p. 785.)

*Note 4.*—The necessary expenses incurred by soldiers as witnesses for the Government allowable under section 850 may be paid by marshals upon proper proof thereof. (Op., XVI, 147.) Army officers and soldiers are entitled to receive their *necessary expenses* in going, returning, and attendance on the court, which must be stated in items and sworn to. They are not in such cases entitled to *mileage* or *witness fees*. The section embraces any person who is an employee of the United States, in however humble a capacity. (Op., XVI, 113.)

## PROFESSORS OF MATHEMATICS.

Sec.
436. In charge of Nautical Almanac.
1399. Number allowed.
1400. How appointed.
1401. Duties.
1480. Rank on active list.
1481. Rank when retired.
1528. Duty at Naval Academy.
1556. Pay.
Act January 20, 1881. Qualifications.

Title 10.

May be placed in charge of Nautical Almanac.
Pay.
Mar. 3, 1857, s. 3, v. 11, p. 246.

SEC. 436. The Secretary of the Navy may place the supervision of the Nautical Almanac in charge of any officer or professor of mathematics in the Navy who is competent for that service. Such officer or professor, when so employed, shall be entitled to receive the shore-duty pay of his grade, and no other.

Title 15, chap. 1.

Number.
Aug. 3, 1848, s. 12, v. 9, p. 272; May 31, 1872, s. 1, v. 17, p. 192.

SEC. 1399. The number of professors of mathematics in the Navy shall not exceed twelve.

Appointment.
Aug. 3, 1848, s. 12, v. 9, p. 272.
See Jan. 20, 1881.

SEC. 1400. Professors of mathematics shall be appointed and commissioned by the President of the United States, by and with the advice and consent of the Senate.

Duties.
Aug. 3, 1848, s. 12, v. 9, p. 272.

SEC. 1401. Professors of mathematics shall perform such duties as may be assigned them by order of the Secretary of the Navy, at the Naval Academy, the Naval Observatory, and on board ships of war, in instructing the midshipmen of the Navy, or otherwise.

Title 15, chap. 4.

Rank.
May 31, 1872, s. 1, v. 17, p. 192.
See "Rank and precedence," sec. 1480.

SEC. 1480. Professors of mathematics shall have relative rank as follows: Three, the relative rank of captain; four, that of commander; and five, that of lieutenant-commander or lieutenant.

Relative rank when retired from age or length of service.
Mar. 1871, s. 11, v. 16, p. 537.

SEC. 1481. * * * Professors of mathematics * * * who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and * * * who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of commodore.

Title 15, chap. 5.

Professors of ethics, Spanish, and drawing.
May 21, 1864, s. 3, v. 13, p. 85.
See note, same sec., Naval Academy.

SEC. 1528. Three professors of mathematics shall be assigned to duty at the Naval Academy, one as professor of ethics and English studies, one as professor of the Spanish language, and one as professor of drawing.

Title 15, chap. 8.

Pay.
July 15, 1870, s. 3, v. 16, p. 331.

SEC. 1556. * * * Professors of mathematics * * * during the first five years after date of appointment, when on duty, two thousand four hundred dollars; on leave, or waiting orders, one thousand five hundred dollars; during the second five years after such date, when on duty, two thousand seven hundred dollars; on leave, or waiting orders, one thousand eight hundred dollars; during the third five years after such date, when on duty, three thousand dollars; on leave, or waiting orders, two thousand one hundred dollars; after fifteen years from such date, when on duty, three thousand five hundred dollars; on leave, or waiting orders, two thousand six hundred dollars.

Hereafter no person shall be appointed a professor of mathematics in the Navy until he shall have passed a physical examination before a board of naval surgeons, and a professional examination before a board of professors of mathematics in the Navy, to be convened for that purpose by the Secretary of the Navy, and received a favorable report from said boards.

Jan. 20, 1881.

21 Stat. L. 317, Supp. R. S., p. 314.

Qualifications. Jan. 20, 1881, v. 21, p. 317.

That the proper pay officer of the Navy be, and is hereby, authorized to pay the professors at the Naval Academy, whose compensation was affected by the Act making appropriations for the naval service for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, approved March second, eighteen hundred and ninety-five, at the rate of compensation fixed by that Act from July first, eighteen hundred and ninety-six. * *

Supp. R. S., vol. 2, p. 599.

Pay of professors at Naval Academy. Mar. 2, 1895, ch. 186 (28 Stat. L., 837).

## PROMOTION OR ADVANCEMENT IN THE NAVY.

### GENERAL PROVISIONS.

Sec.
1407. Promotion of seamen.
1447. Retirement on not passing both boards.
1458. Promotion to vacancies by retirement.
—— Rule of promotion, line and staff.
1493. Physical examination.
1494. Physical disqualification by wounds.
1495. Examinations, when, and effect of.
1496. Examination of professional fitness.
1497. Promotion to rear-admiral in time of peace.
1498. Examining board.
1499. Powers of.
—— Restriction on examination.
1500. Officer may be present, etc.
1501. Record.
1502. Revision by the President.
1503. No officer to be rejected without examination.
1504. Report of recommendation.
1505. Failing in examination.
—— Failing in moral examination.
1506. Advancement in number.
1507. Promotion when grade is full.
1508. Officers receiving thanks of Congress.
1509. Effect of vote of thanks.
1510. Vacancies occasioned by death, etc., of officers thanked.
1560. Commencement of pay, original entry.
1561. Commencement of pay of promoted officers.
—— Commencement of pay on promotion.
1562. Pay in delayed examinations.

SEC. 1407. Seamen distinguishing themselves in battle, or by extraordinary heroism in the line of their profession, may be promoted to forward warrant officers, upon the recommendation of their commanding officer, approved by the flag-officer and Secretary of the Navy. And upon such recommendation they shall receive a gratuity of one hundred dollars and a medal of honor, to be prepared under the direction of the Navy Department.

Title 15, chap. 1.

Promotion of seamen to warrant officers. May 17, 1864, s. 3, v. 13, p. 79. See same sec. Title "Seamen in the Navy."

SEC. 1447. When the case of any officer has been acted upon by a board of naval surgeons and an examining board for promotion, as provided in Chapter Four of this Title, and he shall not have been recommended for promotion by both of the said boards, he shall be placed upon the retired list.

Title 15, chap. 3.

Officers rejected from promotion. Apr. 21, 1864, s. 4, v. 13, p. 53. See note 1. See sec. 1505; also act Aug. 5, 1882.

SEC. 1458. The next officer in rank shall be promoted to the place of a retired officer, according to the established rules of the service, and the same rule of promotion shall be applied successively to the vacancies consequent upon the retirement of an officer.

Promotion to vacancies caused by retirement. Aug. 3, 1861, s. 22, v. 12, p. 291; Dec. 21, 1862, s. 6, v. 12, p. 330. See act following.

*Note 1.*—The President has power to review the action and finding of a board of naval surgeons constituted under the fourth section of the act of April 21, 1864. Both examinations must precede a promotion, and the finding as to both must be approved by the President. (Op., XII, 347, Dec. 30, 1867, Stanberry.)

Title 15, chap. 4.

Physical examination.
Apr. 21, 1864, s. 4, v. 13, p. 53; July 28, 1866, s. 1, v. 14, p. 344.
See note 2.
June 22, 1874.
18 Stat. L., 191.
Supp. R. S., p. 37.
Navy officers promoted, to have pay of grade from date of rank.
R. S., secs. 1493–1510. 19 C. Cls., 623; 116 U. S., 396. 17 Opins., 393.

SEC. 1493. No officer shall be promoted to a higher grade on the active list of the Navy, except in the case provided in the next section, until he has been examined by a board of naval surgeons and pronounced physically qualified to perform all his duties at sea.

That on and after the passage of this act, any officer of the Navy who may be promoted in course to fill a vacancy in the next higher grade shall be entitled to the pay of the grade to which promoted from the date he takes rank therein, if it be subsequent to the vacancy he is appointed to fill.

Physical disqualification by wounds.
Idem.

SEC. 1494. The provisions of the preceding section shall not exclude from the promotion to which he would otherwise be regularly entitled any officer in whose case such medical board may report that his physical disqualification was occasioned by wounds received in the line of his duty, and that such wounds do not incapacitate him for other duties in the grade to which he shall be promoted.

Examinations, when, and effect of.
Mar. 3, 1873, s. 1, v. 17, p. 555.

SEC. 1495. Officers subject to examination before promotion to a grade limited in number by law shall not be entitled to examination in such a sense as to give increase of pay until designated by the Secretary of the Navy to fill vacancies in the higher grade; and officers eligible for promotion to a grade not limited in number shall not be entitled to examination until ordered to present themselves for examination or until a class, in which they are included, has been so ordered by the Secretary of the Navy. [See secs. 1561 and 1562.]

Examination of professional fitness.
Apr. 21, 1864, s. 1, v. 13, p. 53.

SEC. 1496. No line officer below the grade of commodore, and no officer not of the line, shall be promoted to a higher grade on the active list of the Navy until his mental, moral, and professional fitness to perform all his duties at sea have been established to the satisfaction of a board of examining officers appointed by the President.

Promotion to rear-admiral in time of peace.
July 16, 1862, s. 7, v. 12, p. 584; Apr. 21, 1864, v. 13, p. 53.

SEC. 1497. In time of peace no person shall be promoted from the list of commodores to the grade of rear-admiral, on the active list, until his mental, moral, and professional fitness to perform all his duties at sea has been established as provided in the preceding section.

Examining board.
Apr. 21, 1864, s. 2. v. 13, p. 53.

SEC. 1498. Such examining board shall consist of not less than three officers, senior in rank to the officer to be examined.

Powers of.
Idem, s. 1. [See *post*, June 18, 1878.]

SEC. 1499. Said board shall have power to take testimony and to examine all matter on the files and records of the Navy Department relating to any officer whose case may be considered by them. The witnesses, when present, shall be sworn by the president of the board.

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*Note 2.*—The acceptance of a promotion in the Navy is not necessary to consummate the appointment of an officer to a higher grade. [Case of an officer who died before the appointment promoting him was received, and the accounting officers objected to crediting him with the pay of a higher grade.] (Op., XII, 229, Stanberry, Aug. 1, 1867.)

Title 15, chap. 4.

SEC. 1500. Any officer whose case is to be acted upon by such examining board shall have the right to be present, if he so desires, and to submit a statement of his case on oath.

Officer may be present and make statement. Apr. 21, 1864, s. 3, v. 13, p. 53.

SEC. 1501. The statement of such officer, if made, and the testimony of the witnesses and his examination shall be recorded.

Record. Idem.

SEC. 1502. Any matter on the files and records of the Navy Department, touching each case, which may, in the opinion of the board, be necessary to assist them in making up their judgment, shall, together with the whole record and finding, be presented to the President for his approval or disapproval of the finding.

Revision by the President. Idem.

SEC. 1503. No officer shall be rejected until after such public examination of himself and of the records of the Navy Department in his case, unless he fails, after having been duly notified, to appear before said board.

No officer to be rejected without examination. Idem. See note 5.

SEC. 1504. Such examining board shall report their recommendation of any officer for promotion in the following form: "We hereby certify that ——— ——— has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and recommend him for promotion."

Report of recommendation. July 16, 1862, s. 4, v. 12, p. 584; Apr. 21, 1864, s. 4, v. 13, p. 53; July 28, 1866, s. 1, v. 14, p. 344.

SEC. 1505. Any officer of the Navy on the active list below the grade of commander, who, upon examination for promotion, is not found professionally qualified, shall be suspended from promotion for one year, with corresponding loss of date when he shall be re-examined, and in case of his failure upon such re-examination he shall be dropped from the service.

Failing in examination. July 15, 1870, s. 8, v. 16, p. 333. See note 6. See sec. 1447 and act Aug. 5, 1882.

That hereafter in the examination of officers in the Navy for promotion no fact which occurred prior to the last examination of the candidate whereby he was promoted, which has been enquired into and decided upon, shall be again enquired into, but such previous examination, if approved, shall be conclusive, unless such fact continuing shows the unfitness of the officer to perform all his duties at sea.

June 18, 1878. 20 Stat. L., 165. Supp. R. S., p. 193-4. In promotions, matters decided at previous examination not to be inquired into. R. S., secs. 1493-1504. 18 C. Cls., 604. 24 C. Cls., 442.

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*Note 5.*—An officer was under an examination for promotion (secs. 1493 to 1505), and the examination was temporarily suspended and the officer granted permission to go home and be absent until notified to appear. He failed to receive the notice; the examination was resumed and concluded, the proceedings approved, and the officer retired. The vacancy not having been filled, and the rights of no other person having intervened: *Held*, That the action of the President could be revoked and the officer allowed a rehearing. (Op., XVI, 20, May 29, 1878, Tracy's Case.)

*Note 6.*—"Shall be suspended from promotion for one year, with corresponding loss of date," does not mean that the loss of date is to be *contemporaneous* with the term of suspension, but only that it shall agree therewith in point of duration. When an officer is so suspended, the loss of a year is to be reckoned from the occurrence of the vacancy, the date from which he would have taken rank had he been qualified; and the year of suspension from the approval of the President of the finding of the examining boards. While under suspension is ineligible to promotion, and no vacancy is to be kept open for him. The officers eligible during that period are entitled to fill the vacancies. The loss of *date* being one year, if found qualified, on a second examination, to fill a vacancy occurring after the period of suspension, he will be entitled, on promotion thereto, to take rank one year from the date of the vacancy which he would have originally filled. Will not be entitled to the pay of the higher grade from the ranking date in his commission. (Op., XVI, 587, Dec. 10, 1880. Published in Gen. Order 262.)

June 18, 1878, v. 20, p. 265.

SEC. 2. The President of the United States may, in any cases wherein the rule herein prescribed has been violated, order and direct the reexamination of the same.

Aug. 5, 1882.

Failure for misconduct. Aug. 5, 1882. See note 7.

Whenever on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and heard upon the charges against him, he shall not be placed on the retired-list of the Navy, and if the finding of the board be approved by the President, he shall be discharged with not more than one year's pay.

Title 15, chap. 4.

Advancement in number. Apr. 21, 1864, v. 6, s. 13, p. 54; Jan. 24, 1865, s. 1, v. 13, p. 424; June 17, 1878, v. 20, p. 143. See note 8.

SEC. 1506. Any officer of the Navy may, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism; *and the rank of officers shall not be changed except in accordance with the provisions of existing law, and by and with the advice and consent of the Senate.*

Promotion when grade is full. Jan. 24, 1865, s. 2, v. 13, p. 424.

SEC. 1507. Any officer who is nominated to a higher grade by the provisions of the preceding section, shall be promoted, notwithstanding the number of said grade may be full; but no further promotions shall take place in that grade, except for like cause, until the number is reduced to that provided by law.

Officers receiving thanks of Congress. July 16, 1862, s. 9, v. 12, p. 584; Jan. 24, 1865, s. 2, v. 13, p. 424; July 25, 1866, s. 1, v. 14, p. 222.

SEC. 1508. Any line officer, whether of volunteers or of the regular Navy, may be advanced one grade, if, upon recommendation of the President by name, he receives the thanks of Congress for highly distinguished conduct in conflict with the enemy or for extraordinary heroism in the line of his profession.

Effect of vote of thanks. July 1, 1870, res., s. 1, v. 16, p. 384.

SEC. 1509. A vote of thanks by Congress to any officer of the Navy shall be held to affect such officer only; and whenever, as an incident thereof, an officer who would otherwise be retired is retained on the active list, such retention shall not interfere with the regular promotion of others who would otherwise have been entitled by law to promotion.

Vacancies occasioned by death, etc., of officers, thanked. Idem.

SEC. 1510. No promotion shall be made to fill a vacancy occasioned by the final retirement, death, resignation, or dismissal of an officer who has received a vote of thanks,

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*Note 7.*—"One year's pay" has been held by the accounting officers to mean one year's "leave" pay.

*Note 8.*—Congress leaves to the discretion of the President the determination of what acts of heroism should be recommended to the Senate for reward, and in providing that the Senate must advise and consent to the advancement has indicated the only forum which may inquire into the wisdom with which that discretion has been exercised. It is not within the power of a Secretary of the Navy to inquire into the acts of heroism which induced his predecessor and the President to make an advancement. Their action is conclusive on the executive department. (Op. Apr. 23, 1881, MacVeagh. Stevenson's Case.)

By advancement under section 1506 an ensign was promoted to master March 3, 1879, to take rank from November 27, 1877. Not having been "promoted in course to fill a vacancy," not entitled to the pay of the higher grade, under section 1561 of the Revised Statutes, from the date he takes rank, but from the date of his appointment. (Op. Mar. 29, 1882, Brewster. Young's Case.)

The advancement of an officer under section 1506, when the advancement is confined to the same grade in which he already holds a commission, confers upon him no right to an increase of compensation over that which he is in receipt of in virtue of that commission. (Op., XIV, 547, Mar. 18, 1875. Billings's Case.)

unless the number of officers left in the grade where the vacancy occurs shall be less than the number authorized by law.

Title XV, chap. 8.

Commencement of pay, original entry. July 15, 1870, s. 7, v. 16, p. 333.

SEC. 1560. The pay of an officer of the Navy, upon his original entry into the service, except where he is required to give an official bond, shall commence upon the date of his acceptance of his appointment; but where he is required to give such bond his pay shall commence upon the date of the approval of his bond by the proper authority.

Commencement of pay of promoted officers. July 15, 1870, s. 7, v. 16, p. 333; June 5, 1872, s. 1, v. 17, p. 226. See following act and note.

SEC. 1561. When an officer is promoted in course to fill a vacancy, and is in the performance of the duties of the higher grade from the date he is to take rank, he may be allowed the increased pay from such date.

June 22, 1874.

Commencement of pay on promotion. June 22, 1874, s. 1, v. 18, p. 91. See note 9.

That on and after the passage of this act, any officer of the Navy who may be promoted in course to fill a vacancy in the next higher grade shall be entitled to the pay of the grade to which promoted from the date he takes rank therein, if it be subsequent to the vacancy he is appointed to fill.

Title XV, chap. 8.

In cases of delayed examinations. July 15, 1870, s. 7, v. 16, p. 333. See act July 22, 1874, and note, and sec. 1495.

SEC. 1562. If an officer of a class subject to examination before promotion shall be absent on duty, and by reason of such absence, or of other cause not involving fault on his part, shall not be examined at the time required by law or regulation, and shall afterward be examined and found qualified, the increased rate of pay to which his promotion would entitle him shall commence from the date when he would have been entitled to it had he been examined and found qualified at the time so required by law or regulation; and this rule shall apply to any cases of this description which may have heretofore occurred. And in every such case the period of service of the party, in the grade to which he was promoted, shall, in reference to the rate of his pay, be considered to have commenced from the date when he was so entitled to take rank.

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*Note 9.*—Previous to the act of July 15, 1870, chapter 295, the increased pay of a promoted officer commenced from the date of the signing of his appointment to perform the duties of the higher grade, if before the date of his commission, or from the date of his commission if no appointment was previously given. The seventh section of that act provided that it should commence from the date of rank as stated in his commission. The act of June 5, 1872, substantially section 1561, provided that the promotion must have been in course to fill a vacancy, and the officer must have been in the performance of the duties of the higher grade from the date he takes rank. Under the act of June 22, 1874, which now regulates it, the promotion must have been in "course to fill a vacancy" to entitle an officer to the pay of the higher grade from the date he takes rank therein, which date must be subsequent to the vacancy he is appointed to fill.

## RANK AND PRECEDENCE.

Sec.
1372. Of assistant surgeons delayed in examination.
1466. Relative rank of navy and army officers.
1467. Rank according to date.
1468. Commanding officers of vessels and stations.
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1470. Staff officers, when to communicate directly with commanding officers.
1471. Chiefs of bureaus.
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1473. Chief of bureau, retired.
1474. Medical Corps.
1475. Pay Corps.
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1481. Staff officers retired, length of service.
1482. Staff officers retired, incident to service.
1483. Graduates at Naval Academy.
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1485. Precedence by length of service.
1486. Length of service, how estimated.
1487. Quarters.
1488. Military command.
1489. Processions, boards, etc.
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1491. Warrant officers.
1492. Officers of revenue marine.
1506. Advanced in rank; rank not to be changed, except, etc.
1521. Cadet midshipmen promoted.
1601. Commandant, Marine Corps.
1602. Staff officers, Marine Corps.
1603. Rank of Marine Corps with the Army.
—— Rank of Judge-Advocate-General of the Navy.

Rank of assistant surgeons in case of delayed examination.
Mar. 3, 1835, s. 1, v. 4, p. 757.

SEC. 1372. When any assistant surgeon was absent from the United States, on duty, at the time when others of his date were examined, he shall, if not rejected at a subsequent examination, be entitled to the same rank with them; and if, from any cause, his relative rank cannot be assigned to him, he shall retain his original position on the register.

Title 15, chap. 4.

Relative rank of navy and army officers.
July 16, 1862, s. 13, v. 12, p. 585; Dec. 21, 1864, s. 1, v. 13, p. 420; July 25, 1866, s. 1, v. 14, p. 222; Mar. 2, 1867, s. 1, v. 14, p. 515; Mar. 3, 1883.

SEC. 1466. The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:

The Vice-Admiral shall rank with the Lieutenant-General.

Rear-admirals with major-generals.

Commodores with brigadier-generals.

Captains with colonels.

Commanders with lieutenant-colonels.

Lieutenant commanders with majors.

Lieutenants with captains.

Masters (*lieutenants of the junior grade*) with first lieutenants.

Ensigns with second lieutenants.

Rank according to date.
July 16, 1862, s. 1, v. 12, p. 583; Apr. 21, 1864, s. 7, v. 13, p. 54; Jan. 24, 1865, s. 1, v. 13, p. 424.

SEC. 1467. Line officers shall take rank in each grade according to the dates of their commissions.

Commanding officers of vessels and stations.
Mar. 3, 1871, s. 12, v. 16, p. 357.

SEC. 1468. Commanding officers of vessels of war and of naval stations shall take precedence over all officers placed under their command.

Aid or executive.
Idem.

SEC. 1469. The Secretary of the Navy may, in his discretion, detail a line officer to act as the aid or executive of the commanding officer of a vessel of war or naval station, which officer shall, when not impracticable, be next in rank to said commanding officer. Such aid or executive shall, while executing the orders of the commanding officer on board the vessel or at the station, take precedence over all officers attached to the vessel or station. All orders of such aid or executive shall be regarded as proceeding from

the commanding officer, and the aid or executive shall have no independent authority in consequence of such detail.

SEC. 1470. Staff officers, seniors to the officers so detailed, shall have the right to communicate directly with the commanding officer.

Rights of staff officers. Idem.

SEC. 1471. The chiefs of the Bureau of Medicine and Surgery, Provisions and Clothing, Steam Engineering, and Construction and Repair shall have the relative rank of commodore while holding said position, and shall have, respectively, the title of Surgeon General, Paymaster-General, Engineer-in-Chief, and Chief Constructor.

Chiefs of bureaus. Idem. Title of Bureau changed to "Supplies and Accounts." See sec. 1481.

SEC. 1472. When the office of chief of Bureau is filled by a line officer below the rank of commodore, said officer shall have the relative rank of commodore during the time he holds said office.

Chief of bureau, when below rank of commodore. Idem.

SEC. 1473. Officers who have been or who shall be retired from the position of chiefs of the Bureau of Medicine and Surgery, of Provisions and Clothing, of Steam Engineering, or of Construction and Repair, by reason of age or length of service, shall have the relative rank of commodore.

Retired from position of chief of bureau. Idem. Title of Bureau of Provisions and Clothing changed to Supplies and Accounts.

SEC. 1474. Officers of the Medical Corps on the active list of the Navy shall have relative rank as follows:

Medical Corps. Idem, s. 5, p. 535.

Medical directors, the relative rank of captain.

Medical inspectors, the relative rank of commander.

Surgeons, the relative rank of lieutenant-commander or lieutenant.

Passed assistant surgeons, the relative rank of lieutenant or master.

Lieutenant of the junior grade Mar. 3, 1883.

Assistant surgeons, the relative rank of master or ensign.

Lieutenant of junior grade Mar. 3, 1883.

SEC. 1475. Officers of the Pay Corps on the active list of the Navy shall have relative rank as follows:

Pay Corps. Ibid., s. 6, p. 536.

Pay directors, the relative rank of captain.

See note 1.

Pay inspectors, the relative rank of commander.

Paymasters, the relative rank of lieutenant-commander or lieutenant.

Passed assistant paymasters, the relative rank of lieutenant or master.

Lieutenant of junior grade Mar. 3, 1883.

Assistant paymasters, the relative rank of master or ensign.

Lieutenant of junior grade Mar. 3, 1883.

SEC. 1476. Officers of the Engineer Corps on the active list shall have relative rank as follows:

Engineer Corps. Ibid. s. 7, p. 536; Feb. 24, 1874, v. 18, p. 17; Mar. 3, 1883, 22 Stats. L., p. 472.

Of the chief engineers, ten shall have the relative rank of captain, fifteen that of commander, and forty-five that of lieutenant-commander or lieutenant.

*Note 1.*—Section 1475 does not give to a pay inspector in the Navy the grade of commander. It confers upon him the rank of commander by relation (only) to the rank of a line officer of that grade. The designation "pay inspector" expresses both title and grade in the Pay Corps. The commission of an officer as "pay inspector," "with the relative rank of commander," gives the appropriate title and grade of the officer named therein, and fully satisfies the requirement of section 1480, R. S. (Op., XVI, 414, Jan. 8, 1880, Devens.) [For a definition of the words "title," "grade," and "rank," see this opinion and C. C., XV, 151. The latter defines the rank of staff officers of the Navy as usually operative only in determining the relation of the different officers of the service to each other in matters of precedence, privilege, and the like, and is generally called "relative rank." Grade is a step or degree in either office or rank, and has reference to the divisions of the one or the other, or both, according to the connection in which the word is employed.]

See sec. 1390, Engineer Corps.

*Passed* assistant engineers shall have the relative rank of lieutenant or master, and *assistant* engineers that of *lieutenant of the junior grade* or ensign.

Naval constructor. Mar. 3, 1871, s. 9, v. 16, p. 536.

SEC. 1477. Of the naval constructors, two shall have the relative rank of captain, three of commander, and all others that of lieutenant-commander or lieutenant. Assistant naval constructors shall have the relative rank of lieutenant or master.

Civil engineers. Mar. 3, 1871, s. 9, v. 16, p. 536.

SEC. 1478. Civil engineers shall have such relative rank as the President may fix.

General Order 263, Feb. 24, 1881.

The President of the United States has this day, under the provisions of section 1478 of the Revised Statutes, conferred relative rank on Civil Engineers of the Navy, and fixed the same as follows:

One with the relative rank of captain.

Two with the relative rank of commander.

Three with the relative rank of lieutenant-commander.

Four with the relative rank of lieutenant.

Civil engineers will take precedence in their corps, and with other officers with whom they hold relative rank, in accordance with the law regulating precedence of officers of the Navy.

Chaplains. Mar. 3, 1871, s. 9, v. 16, p. 536. See same sec. Title "Chaplains."

SEC. 1479. Chaplains shall have relative rank as follows: Four, the relative rank of captain; seven, that of commander; and not more than seven, that of lieutenant-commander or lieutenant.

Professors of mathematics. May 31, 1872, s. 1, v. 17, p. 192; Feb. 27, 1877, v. 19, p. 244.

SEC. 1480. Professors of mathematics shall have relative rank as follows: Three, the relative rank of captain; four, that of commander; and five, that of lieutenant-commander or lieutenant.

16 A. G. op., p. 414. See sec. 1475. See note 1, p. 109.

The grades established in the six preceding sections for the staff corps of the Navy shall be filled by appointment from the highest members in each corps, according to seniority; and new commissions shall be issued to the officers so appointed, in which the titles and grades established in said sections shall be inserted; and no existing commission shall be vacated in the said several staff corps, except by the issue of the new commissions required by the provisions of this section; and no officer shall be reduced in rank or lose seniority in his own corps by any change which may be required under the provisions of the said six preceding sections: *Provided*, That the issuing of a new appointment and commission to any officer of the Pay Corps under the provisions of this section shall not affect or annul any existing bond, but the same shall remain in force, and apply to such new appointment and commission.

When retired for age or length of service. Mar. 3, 1871, s. 11, v. 16, p. 537.

SEC. 1481. Officers of the Medical, Pay, and Engineer Corps, chaplains, professors of mathematics, and constructors, who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and officers of these several corps who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years

from their entry into the service, have the relative rank of commodore.

SEC. 1482. Staff-officers, who have been or shall be retired for causes incident to the service before arriving at sixty-two years of age, shall have the same rank on the retired list as pertained to their position on the active list.

Retired for causes incident to service. Ibid.

SEC. 1483. Graduates of the Naval Academy shall take rank according to their proficiency as shown by their order of merit at the date of graduation.

Graduates of Naval Academy. May 23, 1872, s. 1, v. 17, p. 158.

SEC. 1484. Engineer officers graduated at the Naval Academy shall take precedence with all other officers with whom they have relative rank, according to the actual length of service in the Navy.

Engineers graduated at Naval Academy. Mar. 3, 1873, s. 1, v. 17, p. 556. See sec. 1394, Engineer Corps.

SEC. 1485. The officers of the staff corps of the Navy shall take precedence in their several corps, and in their several grades, and with officers of the line with whom they hold relative rank according to length of service in the Navy.

Precedence by length of service. Mar. 3, 1871, s. 10, v. 16, p. 537.

SEC. 1486. In estimating the length of service for such purpose, the several officers of the staff corps shall, respectively, take precedence in their several grades and with those officers of the line of the Navy with whom they hold relative rank who have been in the naval service six years longer than such officers of said staff corps have been in said service; and officers who have been advanced or lost numbers on the Navy Register shall be considered as having gained or lost length of service accordingly: *Provided, That nothing in this section shall be so construed as to give to any officer of the staff corps precedence of, or a higher relative rank than that of, another staff officer in the same grade and corps, and whose commission in such grade and corps antedates that of such officer.*

Length of service, how estimated. Mar. 3, 1871, s. 10, v. 16, p. 537; Mar. 3, 1881, v. 21, p. 510; see Op. Feb. 25, 1881; Gen. Order 264.

SEC. 1487. No staff officer shall, in virtue of his relative rank or precedence, have any additional right to quarters.

Quarters. Mar. 3, 1871, s. 10, v. 16, p. 537.

SEC. 1488. The relative rank given by the provisions of this chapter to officers of the Medical, Pay, and Engineer Corps shall confer no authority to exercise military command.

Military command. General Orders. Aug. 31, 1846, and May 27, 1847; Aug. 5, 1854, s. 4, v. 10, p. 587; Mar. 3, 1859, s. 2, v. 11, p. 407.

SEC. 1489. In processions on shore, or courts-martial, summary courts, courts of inquiry, boards of survey, and all other boards, line and staff officers shall take precedence according to rank.

Processions, boards, etc. Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1490. Ensigns shall be steerage officers, unless assigned to duty as watch and division officers.

Ensigns as steerage officers. July 15, 1870, s. 10, v. 16, p. 334.

Sec. 1491. The President may, if he shall deem it conducive to the interests of the service, give assimilated rank to boatswains, gunners, carpenters, and sail-makers, as follows: After five years' service, to rank with ensigns, and after ten years' service, to rank with *junior lieutenants.*

Warrant officers. July 2, 1864, s. 1, v. 13, p. 373; Mar. 3, 1883.

SEC. 1492. The officers of the revenue-cutter service when serving, in accordance with law, as a part of the Navy, shall be entitled to relative rank, as follows: Captains, with

Revenue-cutter officers serving as part of the Navy.

Feb. 2, 1863, s. 4, v. 12, p. 640; Mar. 2, 1799, s. 98, v. 1, p. 699; July 16, 1862, ss. 1, 11, v. 12, pp. 583-585; Mar. 3, 1883. See Title "Revenue-Cutter Service," sec. 1492.

and next after lieutenants commanding in the Navy; first lieutenants, with and next after lieutenants in the Navy; second lieutenants, with and next after *junior lieutenants* in the Navy; third lieutenants, with and next after ensigns in the Navy.

Officers advanced in rank.

SEC. 1506. Any officer of the Navy may, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism; *and the rank of officers shall not be changed except in accordance with the provisions of existing law, and by and with the advice and consent of the Senate.*

Rank not to be changed, except, etc.

Apr. 21, 1864, s. 6, v. 13, p. 54; Jan. 24, 1865, s. 1, v. 13, p. 424; June 17, 1878, v. 20, p. 143. See sec. 1508, Promotion.

Title 15, chap 5.

SEC. 1521. When cadet midshipmen shall have passed successfully the graduating examination at the Academy, they shall receive appointments as midshipmen and shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

Promotion to midshipmen; rank.

July 15, 1870, s. 12, v. 16, p. 334. See note 2.

Title 15, chap 9.

SEC. 1601. The commandant of the Marine Corps shall have the rank *and pay of a colonel in the Army, and shall be appointed by selection by the President from the officers of said corps.*

Rank of commandant Marine Corps.

Mar. 2, 1867, s. 7, v. 14, p. 517; June 6, 1874, v. 18, p. 58.

SEC. 1602. The adjutant and inspector, the paymaster, and the quartermaster shall have the rank of major; *each* assistant quartermaster shall have the rank of captain.

Staff rank, Marine Corps.

Mar. 2, 1847, s. 3, v. 9, p. 154; Feb. 27, 1877, v. 19, p. 244.

SEC. 1603. The officers of the Marine Corps shall be, in relation to rank, on the same footing as officers of similar grades in the Army.

Relative rank of Marine Corps with the Army.

June 30, 1834, s. 4, v. 4, p. 713. See secs. 1601-1603, Title "Marine Corps."

June 8, 1880.

That the President of the United States be, and he is hereby, authorized to appoint, for the term of four years, by and with the advice and consent of the Senate, from the officers of the Navy or the Marine Corps, a Judge-Advocate-General of the Navy, with the rank pay, and allowances of a captain in the Navy or a colonel in the Marine Corps, as the case may be. * * *

Rank of Judge-Advocate-General.

Mar. 8, 1880, v. 21, p. 164.

Amended.

June 5, 1896.

That the Act "to authorize the President to appoint an officer of the Navy or the Marine Corps to perform the duties of solicitor and judge-advocate-general, and so forth, and to fix the rank and pay of such officer," approved June eighth, eighteen hundred and eighty, is hereby amended by inserting in said Act in lieu of the words "with the rank, pay, and allowances of a captain in the Navy, or a colonel in the Marine Corps, as the case may be," the words "with the rank and highest pay of a captain the Navy, or the rank,

29 Stat. L., 251. Supp. R.S., vol. 2, p. 473.

Navy.

Judge-advocate-general's pay.

1880, June 8, ch. 129 (1 Supp. R. S., 290).

R. S., § 349.

*Note 2.*—Section 1521 is changed by the acts of August 5, 1882, and March 3, 1883. Cadet midshipmen are now styled naval cadets until they complete the six years course, and, under certain contingencies, are mustered out or appointed to other places. There are no midshipmen or cadet midshipmen. (See "Naval Academy.")

pay, and allowances of a colonel in the Marine Corps, as the case may be:"

*Provided*, That this amendment shall take effect from July nineteenth, eighteen hundred and ninety-two, the date on which the present incumbent entered on duty, and that the amount herein appropriated shall be payable from the appropriation "Pay of the Navy."

—to date from 1892.

Became a law without the President's approval, June 5, 1896.

## RATIONS.

Sec.
1143. Detachments with the Army.
1577. Rations to naval cadet.
1578. Rations of other officers.
1579. When rations not allowed.
1580. Navy ration, constituents of.
1581. Substitutions in.
1582. Short allowance.
1583. Rations stopped for the sick.
1584. Additional ration.
1585. Commutation price of ration.
1595. None to retired officers.
1615. To enlisted marines.
3721. Purchases of butter and cheese.
3726. Preserved meats.
3727. Flour and bread.
4812. Allowance to Navy hospitals.
Act May 3, 1880. Desiccated tomatoes.

SEC. 1143. The officers of the subsistence department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in co-operation with the land troops, and during the time such detachment is so acting or proceeding to act, furnish rations to the officers, seamen, and marines of the same.

Title 14, chap. 1.

Naval detachments cooperating with the Army.

Dec. 15, 1814, s. 1, v. 3, p. 151.

SEC. 1577. Midshipmen and *naval cadets* in the Navy shall be entitled to one ration, or to commutation therefor.

Title 15, chap. 8.

Rations to naval cadets.

July 28, 1866, s. 8, v. 14, p. 322; Feb. 28, 1867, s. 2, v. 14, p. 416; Aug. 5, 1882, 22 Stat. L., p. 285.

Jan. 30, 1885.

That all enlisted men and boys in the Navy, attached to any United States vessel or station and doing duty thereon, and naval cadets, shall be allowed a ration, or commutation thereof in money, under such limitations and regulations as the Secretary of the Navy may prescribe.

23 Stat. L., 287.

Enlisted men and boys in Navy and naval cadets to have rations or commutation.

R. S., secs. 1577, 1585. Mar. 1, 1889, ch. 331, p. 669.

SEC. 1578. All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a sea-going vessel.

Rations of other officers.

July 16, 1862, s. 19, v. 12, p. 587; Mar. 3, 1851, s. 1, v. 9, p. 631; Op., X, 52, July 10, 1861. See "Pay, Rations, and Mileage," Marine Corps.

SEC. 1579. No person not actually attached to and doing duty on board a sea-going vessel, except the petty officers, seamen, and ordinary seamen attached to receiving-ships or to the ordinary of a navy-yard, and *ensigns of the junior grade and naval cadets*, shall be allowed a ration.

When rations not allowed.

Mar. 3, 1851, s. 1, v. 9, p. 621; Feb. 28, 1867, s. 2, v. 14, p. 416; July 28, 1866, s. 8, v. 14, p. 322; Aug. 5, 1882; Mar. 3, 1883.

SEC. 1580. The Navy ration shall consist of the following daily allowance of provisions to each person: One pound of salt pork, with half a pint of beans or pease; or one pound of salt beef, with half a pound of flour and two

Navy ration, constituents of.

July 18, 1861, s. 1, v. 12, p. 264; July 14, 1862, s. 4, v. 12, p. 565.

See May 3, 1880.

ounces of dried apples, or other dried fruit; or three-quarters of a pound of preserved meat, with a half pound of rice, two ounces of butter, and one ounce of desiccated "mixed vegetables;" or three-quarters of a pound of preserved meat, two ounces of butter, and two ounces of desiccated potatoes; together with fourteen ounces of biscuit, one-quarter of an ounce of tea, or one ounce of coffee or cocoa, and two ounces of sugar; and a weekly allowance of half a pint of pickles, half a pint of molasses, and half a pint of vinegar.

Substitutions in.
July 18, 1861, ss. 2, 3, 4, v. 12, p. 265; Apr. 17, 1862, s. 4, v. 12, p. 381.
See May 3, 1880.

SEC. 1581. The following substitution for the components of the ration may be made when it is deemed necessary by the senior officer present in command: For one pound of salt beef or pork, one pound and a quarter of fresh meat or three-quarters of a pound of preserved meat; for any or all of the articles usually issued with the salted meats, vegetables equal to the same in value; for fourteen ounces of biscuit, one pound of soft bread, or one pound of flour, or half a pound of rice; for half a pint of beans or pease, half a pound of rice, and for half a pound of rice, half a pint of beans or pease. And the Secretary of the Navy may substitute for the ration of coffee and sugar the extract of coffee combined with milk and sugar, if he shall believe such substitution to be conducive to the health and comfort of the Navy, and not to be more expensive to the Government than the present ration: *Provided*, That the same shall be acceptable to the men.

Short allowance.
July 18, 1861, s. 4, v. 12, p. 265.

SEC. 1582. In case of necessity the daily allowance of provisions may be diminished at the discretion of the senior officer present in command; but payment shall be made to the persons whose allowance is thus diminished, according to the scale of prices for the same established at the time of such diminution. And every commander who makes any diminution or variation shall give to the paymaster written orders therefor, specifying particularly the diminution or variation which is to be made, and shall report to his commanding officer, or to the Navy Department, the necessity for the same.

Rations stopped for the sick.
Mar. 3, 1851, s. 1, v. 9, p. 621; June 22, 1860, s. 3, v. 12, p. 83.

SEC. 1583. Rations stopped for the sick on board vessels shall remain and be accounted for by the paymaster as a part of the provisions of the vessels.

Additional ration.
May 23, 1872, s. 1, v. 17, p. 151.

SEC. 1584. An additional ration of tea or coffee and sugar shall be hereafter allowed to each seaman, to be provided at his first "turning out."

Commutation price of ration.
July 15, 1870, s. 4, v. 16, p. 333.

SEC. 1585. Thirty cents shall in all cases be deemed the commutation price of the Navy ration.

Retired officers.
July 16, 1862, s. 20, v. 12, p. 587.
See "Retirement," sec. 1595.

SEC. 1595. Rations shall not be allowed to officers on the retired list.

Title 15, chap. 9.

Rations to enlisted men, Marine Corps.
July 1, 1797, s. 6, v. 1, p. 524; July 11, 1798, s. 2, v. 1, p. 595. See "Marine Corps," sec. 1615.

SEC. 1615. The non-commissioned officers, privates, and musicians of the Marine Corps shall, each, be entitled to receive one Navy ration daily.

No law shall be construed to entitle enlisted marines on shore duty to any rations or commutation therefor other than such as now are or may hereafter be allowed to enlisted men in the army.

Mar. 2, 1891.

Limit of rations to marines on shore duty.

R. S., sec. 1615.

Title 42.

SEC. 3721. The provisions which require that supplies shall be purchased by the Secretary of the Navy from the lowest bidder, after advertisement, shall not apply to * * * the supplies which it may be necessary to purchase out of the United States for vessels on foreign stations, * * * or butter * * * destined for the use of the Navy.

Purchases without advertisements.

* * * Contracts for butter * * * for the use of the Navy may be made for periods longer than one year, if, in the opinion of the Secretary of the Navy, economy and the quality of the ration will be promoted thereby. * * *

Butter.

Mar. 3, 1845, s. 3, v. 5, p. 794; Mar. 3, 1847, s. 2, v. 9, p. 172; Aug. 3, 1848, s. 11, v. 9, p. 272; Mar. 2s, 1865, s. 7, v. 13, p. 467.

SEC. 3726. The Secretary of the Navy is authorized to procure the preserved meats, pickles, butter, and desiccated vegetables, in such manner and under such restrictions and guarantees as in his opinion will best insure the good quality of said articles.

Preserved meats, etc.

July 18, 1861, s. 7, v. 12, p. 265.

SEC. 3727. The Secretary of the Navy is authorized to purchase, in such manner as he shall deem most advantageous to the Government, the flour required for naval use; and to have the bread for the Navy baked from this flour by special contract under naval inspection.

Flour and bread.

Mar. 3, 1863, s. 4, v. 12, p. 818.

Title 59, chap. 1.

SEC. 4812. For every Navy officer, seaman, or marine admitted into a Navy hospital, the institution shall be allowed one ration per day during his continuance therein, to be deducted from the account of the United States with such officer, seaman, or marine.

Allowance of rations to Navy hospitals.

Feb. 26, 1811, s. 4, v. 2, p. 650.

May 3, 1880.

The Secretary of the Navy may substitute for the ration of "two ounces of desiccated potatoes" six ounces of desiccated tomatoes if he shall believe such substitution to be conducive to the health and comfort of the Navy, and not to be more expensive to the Government than the present ration, provided the same shall be acceptable to the men. In the event the Secretary of the Navy orders such substitution he is authorized to have sold at public auction any desiccated potatoes on hand, the proceeds of which sale shall be used in the purchase of desiccated potatoes for the use of the Navy.

21 Stat. L. 86. Supp. R. S., p. 282.

Desiccated tomatoes as a substitute.

## RETIREMENT.

Sec.
1443. After forty years' service.
1444. After sixty-two years of age or forty-five years of service.
1445. Officers of certain ranks to be retired only for disability.
1446. Officers who have received a vote of thanks.
1447. Officers rejected for promotion.
—— Officers rejected for misconduct.
1448. Retiring-board.
1449. Powers and duties of.
1450. Oath of members.
1451. Findings.
1452. Revision by the President.
1453. Disability by an incident of the service.
1454. Disability by other causes.
1455. Not to be retired without a hearing.
1456. Not to be retired for misconduct.
1457. Privileges and liabilities.
1458. Vacancies by retirement.
1459. Withdrawn from command.
—— Act Aug. 5, 1882, prohibiting promotion.
1462. Active duty.
1463. Assigned to command of squadrons and ships.
1464. Commanders of squadrons, from what grades selected.
1465. When restored to active list.
1473. Retired chiefs of bureaus.
1481. When retired for age or length of service.
1482. Retired for causes incident to service, staff.
1588. Pay of retired officers.
1589. Pay of certain rear-admirals.
1590. Pay of third assistant engineers.
1591. Pay not increased by promotion.
1592. Pay on active duty.
1593. Pay of officers retired on furlough.
1594. Transfer from furlough to retired pay.
1595. Not entitled to rations.

Title 15, chap. 3.

After 40 years' service.
Aug. 3, 1861, s. 21, v. 12, p. 290.
Mar. 3, 1883.

SEC. 1443. When any officer of the Navy has been forty years in the service of the United States he may be retired from active service by the President upon his own application.

Promotions and increase of pay for retired officers prohibited.
R. S., secs. 1443–1465.

Hereafter there shall be no promotion or increase of pay in the retired list of the Navy but the rank and pay of officers on the retired list shall be the same that they are when such officers shall be retired.

After 62 years of age or 45 years' service.
Dec. 21, 1861, s. 1, v. 12, p. 329; June 25, 1864, s. 1, v. 13, p. 183; Dec. 21, 1864, s. 3, v. 13, p. 420; July 16, 1862, s. 8, v. 12, p. 584; Mar. 3, 1873, v. 17, p. 556.

SEC. 1444. When any officer below the rank of Vice-Admiral is sixty-two years old, he shall, except in the case provided in the next section, be retired by the President from active service.

Officers of certain ranks to be retired only for disability.
July 15, 1870, s. 6, v. 16, p. 333; Feb. 24, 1874, v. 18, p. 17; Mar. 3, 1883.

SEC. 1445. The two preceding sections shall not apply to any lieutenant-commander, lieutenant, *lieutenant of the junior grade*, ensign, passed assistant surgeon, passed assistant paymaster, *passed* assistant engineer, assistant surgeon, assistant paymaster, or *assistant* engineer; and such officers shall not be placed upon the retired list, except on account of physical or mental disability.

Officers who have received a vote of thanks.
July 16, 1862, s. 8, v. 12, p. 584.

SEC. 1446. Officers on the active list, not below the grade of commander, who have, upon the recommendation of the President, received by name, during the war for the suppression of the rebellion, a vote of thanks of Congress for distinguished service, shall not be retired, except for cause, until they have been fifty-five years in the service of the United States.

Officers rejected for promotion.
Apr. 21, 1864, s. 4, v. 13, p. 53.
See sec. 1456, and act of Aug. 5, 1882.

SEC. 1447. When the case of any officer has been acted upon by a board of naval surgeons and an examining board for promotion, as provided in Chapter Four of this Title, and he shall not have been recommended for promotion by both of the said boards, he shall be placed upon the retired list.

Aug. 5, 1882.

Not to be retired for misconduct.
Aug. 5, 1882.
See sec. 1456.

Whenever on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and heard upon the charges against him, he shall not be placed on the retired-list of the Navy, and if the finding of the board be approved by the President, he shall be discharged with not more than one year's pay.

Title 15, chap. 8.

Retiring board.
Aug. 3, 1861, s. 23, v. 12, p. 291.

SEC. 1448. Whenever any officer, on being ordered to perform the duties appropriate to his commission, reports himself unable to comply with such order, or whenever, in the judgment of the President, an officer is incapacitated to perform the duties of his office, the President, at his discretion, may direct the Secretary of the Navy to refer the case of such officer to a board of not more than nine nor less than five commissioned officers, two-fifths of whom shall be members of the Medical Corps of the Navy. Said board, except the officers taken from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of.

See note 1.

Powers and duties of.
Aug. 3, 1861, s. 17, v. 12, p. 290.

SEC. 1449. Said retiring-board shall be authorized to inquire into and determine the facts touching the nature and occasion of the disability of any such officer, and shall have such powers of a court-martial and of a court of inquiry as may be necessary.

Oath of members.
Aug. 3, 1861, s. 23, v. 12, p. 291.

SEC. 1450. The members of said board shall be sworn in each case to discharge their duties honestly and impartially.

Findings.
Idem.

SEC. 1451. When said retiring-board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, produced his incapacity, and whether such cause is an incident of the service.

Revision by the President.
Idem.
See note 2.

SEC. 1452. A record of the proceedings and decision of the board in each case shall be transmitted to the Secretary of the Navy, and shall be laid by him before the President for his approval or disapproval, or orders in the case.

Disability by an incident of the service.
Aug. 3, 1861, s. 23, v. 12, p. 291.

SEC. 1453. When a retiring-board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of the service, such officer shall, if said decision is approved by the President, be retired from active service with retired pay, as allowed by Chapter Eight of this Title.

Disability by other causes.
Idem.

SEC. 1454. When said board finds that an officer is incapacitated for active service and that his incapacity is not

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*Note 1.*—No power of review over the proceedings of a retiring board exists by law where its finding has been once approved by the President and his "orders in the case" executed. (Op., XV, p. 446, Devens, Feb. 8, 1878, Rodney's Case.)

Where a naval retiring board, convened to inquire into the nature and cause of the disability of an officer, has once finished its work, rendered a complete judgment in the case, and adjourned, a subsequent reconsideration of its judgment by the board, unless authorized or directed by proper authority, can have no legal effect. (Op., XVI, p. 104, Devens, July 25, 1878, Rodney's Case.)

Retirement of warrant officers.
C. C., v. 18, p. 537. Brown's Case.

*Note 2.*—The act of August 3, 1861, chap. 42, s. 23 (12 Stat L., 291, now R. S., secs. 448, 1455), applies to warrant officers, and they may be retired as well as commissioned officers. The President's act in retiring a boatswain in 1872 was legal and valid. See title "Warrant officers," secs. 1406, 1417.

18 A. G. op., p. 96. See Aug. 5, 1882.

the result of any incident of the service, such officer shall, if said decision is approved by the President, be retired from active service on furlough-pay, or wholly retired from service with one year's pay, as the President may determine.

Not to be retired without a hearing. Idem.

SEC. 1455. No officer of the Navy shall be retired from active service, or wholly retired from the service, without a full and fair hearing before such Navy retiring-board, if he shall demand it, except in cases where he may be retired by the President at his own request, or on account of age or length of service, or on account of his failure to be recommended by an examining board for promotion.

Not to be retired for misconduct. July 15, 1870, s. 6, v. 16, p. 333. See sec. 1447 and act Aug. 5, 1882.

SEC. 1456. No officer of the Navy shall be placed on the retired list because of misconduct; but he shall be brought to trial by court-martial for such misconduct.

Privileges and liabilities. Jan. 16, 1857, s. 4, v. 11, p. 154; Aug. 3, 1861, ss. 22, 23, 24, v. 12, pp. 290, 291. See notes 3, 4, and 5.

SEC. 1457. Officers retired from active service shall be placed on the retired list of officers of the grades to which they belonged respectively at the time of their retirement, and continue to be borne on the Navy Register. They shall be entitled to wear the uniform of their respective grades, and shall be subject to the rules and articles for the government of the Navy and to trial by general court-martial. The names of officers wholly retired from the service shall be omitted from the Navy Register.

Vacancies by retirement. Aug. 3, 1861, s. 22, v. 12, p. 291; Dec. 21, 1861, s. 6, v. 12, p. 330.

SEC. 1458. The next officer in rank shall be promoted to the place of a retired officer, according to the established rules of the service; and the same rule of promotion shall be applied successively to the vacancies consequent upon the retirement of an officer.

Withdrawn from command. Aug. 3, 1861, s. 22, v. 12, p. 290; Dec. 21, 1861, ss. 3, 4, v. 12, p. 329. See note 6. See Aug. 5, 1882.

SEC. 1459. Officers on the retired list shall be withdrawn from command, except in the case provided in sections fourteen hundred and sixty-three and fourteen hundred and sixty-four, and from the line of promotion on the active list.

Active duty. Mar. 3, 1873, v. 17, p. 547. See note 3, Title "Dismissal and Resignation of Officers."

SEC. 1462. No officer on the retired list of the Navy shall be employed on active duty except in time of war.

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*Note 3.*—An act of January 30, 1875, v. 18, p. 304, provided for difference of pay for certain officers dropped, retired, etc., under the act of February 28, 1855.

*Note 4.*—The appointment of a line officer of the Navy to be the chief of a bureau is an investiture of him with an additional office. While holding that office he has the relative rank of commodore, but remains in his lineal position in the Navy. The grade to which he belongs for the purposes of section 1457 is that which he holds in the Navy, and not that of the relative rank incidental to his temporary occupation of another and distinct office. (Op. July 8, 1881, MacVeagh. Whiting's Case. See also Op., X, p. 378.)

Retirement of officers. C. C., Woods's Case, v. 18, p. 761.

*Note 5.*—Congress may retire an officer from active service and place him on the retired list with a rank different from that which attaches to his office by general laws, and may change the mere rank of an officer on the active or retired list at pleasure, without coming in conflict with the Constitution. (Decisions of the C. C., XV, p. 151, affirmed by Supreme Court.)

*Note 6.*—Sections 1460 and 1461, from the acts of July 16, 1862, s. 14, v. 12, p. 585; Aug. 15, 1876, v. 19, p. 204; July 25, 1866, s. 1, v. 14, p. 222; Jan. 16, 1857, ss. 4 and 11, p. 154; Jan. 30, 1875, v. 18, p. 304, and Mar. 2, 1867, s. 9, v. 14, p. 517, contained provisions for the promotion of officers on the retired list, under certain conditions. They were repealed or annulled by the act of Aug. 5, 1882, forbidding such promotion.

(1) That any retired officer of the Navy or Marine Corps may, on his own application, be detailed to service as a teacher or professor in any school or college,

Mar. 2, 1895.

Retired officers Navy and Marine Corps may act as teachers.

but while so serving such officer shall be allowed no additional compensation.

R. S., sec. 1462.—without additional compensation.

SEC. 1463. In time of war the President, by and with the advice and consent of the Senate, may detail officers on the retired list for the command of squadrons and single ships, when he believes that the good of the service requires that they shall be so placed in command.

Assigned to command of squadrons and ships.

Dec. 21, 1861, s. 3, v. 12, p. 329; Mar. 3, 1873, s. 1, v. 17, p. 547.

SEC. 1464. In making said details the President may select any officer not below the grade of commander and assign him to the command of a squadron, with the rank and title of "flag-officer;" and any officer so assigned shall have the same authority and receive the same obedience from the commanders of ships in his squadron holding commissions of an older date than his that he would be entitled to receive if his commission were the oldest.

Commanders of squadrons, from what grades selected.

Dec. 21, 1861, s. 4, v. 12, p. 329.

SEC. 1465. Retired officers so detailed for the command of squadrons and single ships may be restored to the active list, if, upon the recommendation of the President, they shall receive a vote of thanks of Congress for their services and gallantry in action against the enemy, and not otherwise.

When restored to active list.

Idem, s. 3.

SEC. 1473. Officers who shall have been, or who shall be, retired from the positions of chiefs of the Bureaus of Medicine and Surgery, of Provisions and Clothing, of Steam Engineering, or of Construction and Repair, by reason of age or length of service, shall have the relative rank of commodore.

Title 15, chap. 4.

Retired from position of chief of bureau.

Mar. 3, 1871, s. 5, v. 16, p. 535.

SEC. 1481. Officers of the Medical, Pay, and Engineer Corps, chaplains, professors of mathematics, and constructors, who shall have served faithfully for forty-five years, shall, when retired, have the relative rank of commodore; and officers of these several corps who have been or shall be retired at the age of sixty-two years, before having served for forty-five years, but who shall have served faithfully until retired, shall, on the completion of forty years from their entry into the service, have the relative rank of commodore.

Relative rank of staff officers when retired for age or length of service.

Mar. 3, 1871, s. 11, v. 16, p. 537.

SEC. 1482. Staff-officers, who have been or shall be retired for causes incident to the service before arriving at sixty-two years of age, shall have the same rank on the retired list as pertained to their position on the active list.

When retired for causes incident to service.

Idem.

SEC. 1588. The pay of all officers of the Navy who have been retired after forty-five years' service after reaching the age of sixteen years, or who have been or may be retired after forty years' service, upon their own application to the President, or on attaining the age of sixty-two years, or on account of incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure therein, shall, when not on active duty, be equal to seventy-five per centum of

Title 15, chap. 8.

Pay of retired officers.

July 15, 1870, s. 5, v. 16, p. 333; Mar. 3, 1873, s. 1, v. 17, p. 555.

See notes 7, 8, and 9 and 10.

the sea pay provided by this chapter for the grade or rank which they held, respectively, at the time of their retirement. The pay of all other officers on the retired list shall, when not on active duty, be equal to one-half the sea-pay provided by this chapter for the grade or rank held by them, respectively, at the time of their retirement.

Rear-admirals. June 5, 1872, s. 1, v. 17, p. 226; Mar. 3, 1873, s. 1, v. 17, p. 555.

SEC. 1589. Rear-admirals on the retired list of the Navy, who were retired as captains when the highest grade in the Navy was captain, at the age of sixty-two years, or after forty-five years' service, and who, after their retirement, were promoted to the grade of rear-admiral, and performed the duties of that grade in time of war, shall be considered as having been retired as rear-admirals.

Third assistant engineers. Mar. 3, 1859, s. 2, v. 11, p. 407; Aug. 3, 1861, s. 22, v. 12, p. 290; July, 1862, s. 20, v. 12, p. 587; Apr. 21, 1864, s. 7, v. 13, p. 54; July 15, 1870, s. 5, v. 16, p. 333.

SEC. 1590. Officers who have been retired as third assistant engineers shall continue to receive pay at the rate of four hundred dollars a year.

Pay not increased by promotion. Mar. 2, 1867, s. 9, v. 14, p. 517; July 15, 1870, s. 5, v. 16, p. 333.

SEC. 1591. No officer, heretofore or hereafter promoted upon the retired list, shall, in consequence of such promotion, be entitled to any increase of pay.

Aug. 5, 1882. 22 Stat. L., p. 286.

Hereafter there shall be no promotion or increase of pay in the retired list of the Navy but the rank and pay of officers on the retired list shall be the same that they are when such officers shall be retired.

No promotion, etc., of retired officers. 17 A. G. op., p. 495.

Title 15, chap. 8.

SEC. 1592. Officers on the retired list, when on active duty, shall receive the full pay of their respective grades.

Pay on active duty. June 1, 1860, s. 5, v. 12, p. 27; Mar. 2, 1867, s. 9, v. 14, p. 517.

Officers retired on furlough pay. Mar. 3, 1835, s. 1, v. 4, p. 756; Feb. 28, 1855, s. 2, v. 10, p. 616; Jan. 16, 1857, s. 1, v. 11, p. 154; Aug. 3, 1861, s. 23, v. 12, p. 291; July 28, 1866, s. 2, v. 14, p. 345; Jan. 30, 1875, v. 18, p. 304.

SEC. 1593. Officers placed on the retired list, on furlough pay, shall receive only one-half of the pay to which they would have been entitled if on leave of absence on the active list.

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*Note 7.*—Sections 1588, 1590, and 1593, which contain provisions both of a general and special character prescribing the compensation of naval retired officers, and embracing within their scope all such officers, whether of the line or staff, superseded all provisions in force at the adoption of the Revised Statutes by which that compensation was previously regulated, and those sections thereafter furnished the only law upon the subject. (Op., XV, p. 316, Devens, June 18, 1877.)

*Note 8.*—The first clause of section 1588 simply limits its application to officers who, after having attained the age of sixteen years, render forty-five years service and are then retired. An officer entering the Navy at fifteen years of age, would have to serve forty-six years before becoming entitled to the benefits of the section.

C. C., v. 18, p. 389. Rutherford's Case.

*Note 9.*—The word "grade" in sec. 1588, R. S., refers to the divisions of officers into five-year periods of service. An officer retired in the third period of five years' service is entitled to 75 per cent of the sea pay of that pay grade, and not to the highest pay of a chief engineer who has served over twenty years. [Use of words "grade" and "rank" in the several statutes relative to the Navy is discussed in this opinion.]

Longevity pay. C. C., v. 18, p. 111, 1883; Thornley's Case: also, p. 537, Brown's Case.

*Note 10.*—Longevity pay for officers of the Navy was first established by law in 1835. It was then allowed only to surgeons. Officers of the Navy on the retired list are not entitled to increase of pay by reason of longevity while on that list. The periods of five years' service mentioned in R. S., sec. 1556, for increase of pay are "grades" within the meaning of R. S., sec. 1588.

SEC. 1594. The President, by and with the advice and consent of the Senate, may transfer any officer on the retired list from the furlough to the retired-pay list.

Transfer from furlough to retired pay.

Jan. 16, 1857, s. 3, v. 11, p. 154; July 16, 1862, s. 20, v. 12, p. 587; Jan. 30, 1875, v. 18, p. 304. See notes under Pay, Furlough, and Dismissal and Resignation of Officers.

SEC. 1595. Rations shall not be allowed to officers on the retired list.

Rations.

July 16, 1862, s. 20, v. 12, p. 587. See "Rations," sec. 1595.

RETIREMENT in MARINE CORPS (*see* MARINE CORPS, Division II).

## SECRETARIES AND CLERKS.

Sec.
1556. Secretary at Naval Academy.
—— Clerks at Naval Academy.
1386. Clerks to paymasters.
1387. When not allowed to paymasters.
1388. Clerks to passed assistant and assistant paymasters.
Sec.
1556. Pay of same.
1556. Clerks to commandants.
1416. Discontinuance of, at yards.
—— No more appointments from civil life.
—— Officers as secretaries and clerks.

Secretary of the Naval Academy, one thousand eight hundred dollars.

July 15, 1870, s. 3, v. 16, p. 332.

Title 15, chap. 1.

SEC. 1386. Paymasters of the fleet, paymasters on vessels having complements of more than one hundred and seventy-five persons, on supply-steamers, store-vessels, and receiving ships, paymasters at stations and at the Naval Academy, and paymasters detailed at stations as inspectors of provisions and clothing, shall each be allowed a clerk.

Clerks to paymasters of the fleet and others.

July 14, 1862, s. 3, v. 12, p. 565; May 26, 1864, v. 13, p. 92.

SEC. 1387. No paymaster shall be allowed a clerk in a vessel having the complement of one hundred and seventy-five persons or less, excepting in supply steamers and store-vessels.

When not allowed.

May 26, 1864, v. 13, p. 92.

SEC. 1388. Passed assistant paymasters and assistant paymasters attached to vessels of war shall be allowed clerks, if clerks would be allowed by law to paymasters so attached.

Clerks of passed assistant and assistant paymasters.

Mar. 3, 1863, s. 5, v. 12, p. 818.

Title 15, chap. 8.

SEC. 1556. * * * Clerks to paymasters at navy-yards, Boston, New York, Philadelphia, and Washington, one thousand six hundred dollars; Kittery, Norfolk, and Pensacola, one thousand four hundred dollars; Mare Island, one thousand eight hundred dollars.

Clerks to paymasters of yards and stations.

Clerks to paymasters, at other stations, one thousand three hundred dollars.

Clerks to paymasters of receiving-ships at Boston, New York, and Philadelphia, one thousand six hundred dollars; at Mare Island, one thousand eight hundred dollars; of other receiving-ships, one thousand three hundred dollars.

Clerks to paymasters of receiving ships, etc.

Clerks to paymasters on vessels of the first rate, one thousand three hundred dollars; on vessels of the second rate, one thousand one hundred dollars; on vessels of the third rate, and supply-vessels and store-ships, one thousand dollars.

Clerks to paymasters of vessels.

Clerks to fleet paymasters.

Clerks to fleet paymasters, one thousand one hundred dollars.

Clerks to paymasters at Asylum and Academy.

Clerks to paymasters at the Naval Academy and Naval Asylum, one thousand three hundred dollars.

Clerks to inspectors.
July 15, 1870, s. 3, v. 16, p. 332.
See note 1.

Clerks to inspectors in charge of provisions and clothing, at navy-yards, Boston, New York, Philadelphia, and Washington, one thousand six hundred dollars; to inspectors in like charge at other inspections, one thousand three hundred dollars.

Pay.
July 15, 1870, s. 3, v. 16, p. 332.

SEC. 1556. * * * First clerks to commandants of navy-yards, one thousand five hundred dollars.

Second clerks to commandants of navy-yards, one thousand two hundred dollars.

Clerk to commandant of navy-yard at Mare Island, one thousand eight hundred dollars.

Clerks to commandants of naval stations, one thousand five hundred dollars.

Title 15, chap. 1.

Clerks at yards may be discontinued.
Aug. 10, 1846, s. 1, v. 9, p. 98.

SEC. 1416. The Secretary of the Navy is authorized, when in his opinion the public interest will permit it, to discontinue the office or employment of * * * any clerk of the yard, clerk of the commandant, clerk of the storekeeper, clerk of the naval constructor. * * *

May 4, 1878.

Secretaries and clerks from civil life not to be appointed afloat.
Detail of officers to perform the duties.
May 4, 1878, v. 20, p. 50; Mar. 3, 1883.

On and after the first day of July, eighteen hundred and seventy-eight, there shall be no appointments made from civil life of secretaries or clerks to the Admiral, or Vice-Admirals, when on sea service, commanders of squadrons, or of clerks to commanders of vessels; and an officer not above the grade of lieutenant shall be detailed to perform the duties of secretary to the Admiral or Vice-Admiral, when on sea service, and one not above a *lieutenant of the junior* grade to perform the duties of clerk to a rear-admiral or commander, and one not above the grade of ensign to perform the duties of clerk to a captain, commander, or lieutenant-commander when afloat. * * *

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*Note 1.*—The clerk of a paymaster in the Navy is subject to the jurisdiction of a court-martial, and may be arrested and tried for an offense committed while in the service, even after his connection with it has been legally severed. (*Ex parte* Bogart, 17 Int. Rev. Rec., 155.)

Under the act of Mar. 2, 1863, a paymaster's clerk is a person in the military service, and liable to trial by court-martial. (United States *v.* Bogart, 3 Benedict R., 257.)

A regularly appointed clerk of a paymaster in the Navy is a "person in the naval service of the United States" within the meaning of article 14, section 1624, of the Revised Statutes, and for a violation of its provisions is subject to be tried, convicted, and sentenced by a naval general court-martial. (Otto, S. C., 100, p. 13, Oct., 1879.) See same, case of Reed, paymaster's clerk, tried by court-martial, where, on habeas corpus, the Supreme Court decided that the court-martial had jurisdiction and was competent to pass the sentence of which he complained.

A paymaster's clerk in the Navy, regularly appointed, and assigned to duty on a receiving ship, is a person in the naval service of the United States, subject to be tried and convicted, and to be sentenced to imprisonment, by a general court-martial, for a violation of section 1624 of the Revised Statutes. (Johnson *v.* Sayre, 158 U. S., p. 109.)

## SEAMEN IN THE NAVY.

Sec.
——. Apprentices of the Navy.
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1576. Assignment of wages.
Act February 9, 1889. Petty officers and seamen may deposit savings, etc.
4878. Burial of seamen in national cemeteries.
—— Machinists in the Navy.

That the Secretary of the Navy be, and he is hereby, authorized to establish a training station for naval apprentices on the island of Yerba Buena (or Goat Island), in the harbor of San Francisco, California; and said Secretary is authorized to designate two officers of the Navy, and the Secretary of War is authorized to designate one officer of the Army, said three officers to constitute a board, who shall select and assign so much of said island as may be necessary for the purpose of establishing said naval training station; and the site so selected, when approved by the President, shall be, by virtue of this Act, transferred to the Navy Department for the purposes of said naval training station.

April 24, 1896. 29 Stat. L., 96. Supp. R. S., vol. 2, p. 457. Naval apprentice training station established.

SEC. 2. That all apprentices of the Navy, whether at a training station or on board an apprentice training ship, shall be additional to the number (1) of enlisted persons allowed by law for the Navy.

Apprentices not included in limit of enlisted men. R. S., § 1417.

SEC. 1407. Seamen distinguishing themselves in batttle, or by extraordinary heroism in the line of their profession, may be promoted to forward warrant officers, upon the recommendation of their commanding officer, approved by the flag-officer and Secretary of the Navy. And upon such recommendation they shall receive a gratuity of one hundred dollars and a medal of honor, to be prepared under the direction of the Navy Department.

Title 15, chap. 1. Promotion of seamen to warrant officers. May 17, 1864, s. 3, v. 13, p. 79. See note 2. See same sec., Title "Promotion or Advancement."

SEC. 1408. Mates may be rated, under authority of the Secretary of the Navy, from seamen and ordinary seamen who have enlisted in the naval service for not less than two years.

Seamen may be rated as mates. May 17, 1864, s. 3, v. 13, p. 79; Mar. 3, 1865, s. 3, v. 13, p. 539.

SEC. 1409. The rating of an enlisted man as a mate, or his appointment as a warrant officer, shall not discharge him from his enlistment.

Rating shall not discharge from enlistment. Idem.

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*Note 1.*—This number is fixed by 1893, March 3, ch. 212, par. 8, *ante*, p. 131, at 9,000; though by 1895, March 2, ch. 186, par. 1, *ante*, p. 426, the enlistment of 1,000 additional seamen is authorized in the discretion of the Secretary of the Navy.

*Note 2.*—The seventh section of the act of December 21, 1861, vol. 12, p. 329, authorized the Secretary of the Navy to prepare medals of honor, with suitable emblematic devices, to be bestowed upon such petty officers, seamen, landsmen, and marines as should most distinguish themselves by their gallantry in action, and other seamanlike qualities during the war of the rebellion. Appropriations have since been made for such medals, which are bestowed in meritorious cases, although no promotion takes place.

Petty officers. July 17, 1862, s. 18, v. 12, p. 610.

SEC. 1410. All officers not holding commissions or warrants, or who are not entitled to them, except such as are temporarily appointed to the duties of a commissioned or warrant officer, and except secretaries and clerks, shall be deemed petty officers, and shall be entitled to obedience, in the execution of their offices, from persons of inferior ratings.

Mar. 3, 1893.

Number of enlisted men fixed at 9,000. See note 3.

June 10, 1896.

Supp. R. S., vol. 2, p. 517. 29 Stat. L., 361.

Navy. Additional seamen. Mar. 3, 1893, ch. 212, par. 8, p. 131.

*Substitute for* R. S., 1417.

Apprentices, etc., to be preferred in appointment of warrant officers.

Promotion of seamen as warrant officers not affected.

R. S., sec. 1407. June 7, 1864, v. 13, p. 120; June 17, 1868, s. 2, v. 15, p. 72; May 12, 1879, v. 21, p. 3; June 30, 1876, v. 19, p. 66.

SEC. 1417. And the number of persons who may at one time be enlisted into the Navy of the United States, including seamen, ordinary seamen, landsmen, mechanics, firemen, and coal heavers, and including one thousand five hundred apprentices and boys, hereby authorized to be enlisted annually, shall not exceed nine thousand. * * * And the Secretary of the Navy is hereby authorized to enlist at any time after the passage of this Act as many additional men as in his discretion he may deem necessary, not to exceed one thousand. *Provided, That in the appointment of warrant-officers in the naval service of the United States, preference shall be given to men who have been honorably discharged upon the expiration of an enlistment as an apprentice or boy, to serve during minority, and reenlisted within three months after such discharge, to serve during a term of three or more years: Provided further, That nothing in this act* [section] *shall be held to abrogate the provisions of section fourteen hundred and seven of the Revised Statutes of the United States.*

Term of enlistment. Mar. 2, 1837, s. 1, v. 5, p. 153; May 12, 1879, v. 21, p. 3; Feb. 23, 1881, v. 21, p. 331. See note 4.

SEC. 1418. Boys between the ages of *fourteen* and eighteen years may be enlisted to serve in the Navy until they shall arrive at the age of twenty-one years; other persons may be enlisted to serve for a period not exceeding five years, unless sooner discharged by direction of the President.

That section fourteen hundred and eighteen be amended so as to read as follows:

May 12, 1879, 21 Stat. L., 3, Supp. R. S., p. 263.

Enlistment of boys and others. Substitute for R. S., § 1419.

"SEC. 1418. Boys between the ages of fifteen (5) and eighteen years may be enlisted to serve in the Navy until they shall arrive at the age of twenty-one years; other persons may be enlisted to serve for a period not exceeding five years, unless sooner discharged by direction of the President."

—between ages of 15 and 18 years

That section fourteen hundred and nineteen be amended so as to read as follows:

Substitute for R. S., § 1419.

"SEC. 1419. Minors between the ages of fifteen (5) and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians."

What persons are prohibited from enlisting.

That section fourteen hundred and twenty be amended so as to read as follows:

"SEC. 1420. No minor under the age of fifteen (5) years,

*Note 3.*—The number of enlisted men in the Navy was fixed by R. S., sec. 1417, at 8,500. This was reduced by 1876, June 30, ch. 159 (incorporated in second edition of R. S., 19 Stat. L., 66), to 7,500; increased by 1879, May 12, ch. 5 (1 Supp. R. S., 263), to 8,250, and by the above act to 9,000.

*Note 4.*—The original statute limiting the age to sixteen, was amended by act of May 12, 1879, to fifteen, and by Stat. L., v. 21, p. 338, changed to fourteen.

*Note 5.*—Changed to "fourteen" by 1881, Feb. 23, ch. 73, § 2, p. 318.

no insane or intoxicated person, and no deserter from the naval or military service of the United States, shall be enlisted in the naval service."

SEC. 1419. Minors between the ages of *fourteen* and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians.

Consent of parents and guardians.
Mar. 2, 1837, s. 1, v. 5, p. 153; Mar. 3, 1865, s. 18, v. 13, p. 490; May 12, 1879, v. 21, p. 3; Feb. 23, 1881, v. 21, p. 331.

SEC. 1420. No minor under the age of *fourteen* years, no insane or intoxicated person, and no deserter from the naval or military service of the United States, shall be enlisted in the naval service.

Persons not to be enlisted.
Mar. 3, 1865, s. 18, v. 13, p. 490; May 12, 1879, v. 21, p. 3; Feb. 23, 1881, v. 21, p. 331.
See note 6.

That in order to encourage the enlistment of boys as apprentices in the United States Navy, the Secretary of the Navy is hereby authorized to furnish as a bounty to each of said apprentices after his enlistment, and when first received on board of a training-ship, an outfit of clothing not to exceed in value the sum of forty-five dollars.

Mar. 1, 1889.
25 Stat. L., 781.
Naval apprentices to have bounty outfit on enlistment.
R. S., secs. 1417-1420.
May 12, 1879, ch. 5, p. 263; Feb. 23, 1881, ch. 73, s. 2, p. 318.

And fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court martial, under article twenty-two of the articles for the government of the Navy;

Mar. 3, 1893.
27 Stat. L., 715.
Supp. R.S., 1892-5, p. 130.
Punishment for fraudulent enlistment.
R.S., secs. 1417-1420, 1624, arts. 19, 22.

but this provision shall not take effect until sixty days after the passage of this act.

When takes effect.

The register of wills shall hereafter prepare papers in connection with appointment of guardians to enable indi-

Mar. 3, 1891.
Navy enlistment papers to be prepared free.

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*Note 6.*—United States courts can inquire into the validity of enlistments on habeas corpus, and thereupon discharge enlisted persons in proper cases. This power can not legally be exercised by State courts. (Winthrop's Digest, pp., 250, 280, with authorities given.) Subject discussed. (Also Op, XII, 259.)

It has generally been held that the enlistment of minors in the Navy, over 18, was legal. The circuit court of the United States, district of Massachusetts, however, January 30, 1883, ordered the discharge of a minor, basing its action on a decision of Judge Lowell in 1870, which was that Congress had the right to pass a law making legal the enlistment of a minor, but not having done so by explicit statute the common law of the State must rule—the services of a minor belonging to its legal guardian.

The United States are empowered to raise and maintain a Navy, and have a right to prescribe the rules and conditions under which voluntary or compulsory services are to be rendered by citizens. The periods at which persons reach their majority and become *sui juris* with respect to the ordinary affairs of life cannot abridge this power of the General Government. A minor over 18 years of age can, by enlistment, bind himself during his minority, and there is no reason why he cannot bind himself for a further period. A minor who, at the age of 19, enlisted in the Navy is bound by such enlistment, even though it extends beyond the date on which he becomes of age. A. G. O. Apr. 16, 1896.

The executive department has discretionary authority to discharge before the term of service has expired, but has no power to vary the contract of enlistment. (Op., IV, 538; XV, 362.)

Enlistment "*for three years* or *during the war*" means three years from date of muster, if war should last so long, and if it should not, then until it should end. Reference to *duration*, a restriction, not an extension. Can not be legally retained over three years, although the war may extend beyond that period. (Winthrop, p. 252.) Refers to decision of supreme court of Pennsylvania and other authorities.

An alien can be enlisted in the naval service or the Marine Corps, and is bound the same as a citizen to serve for his term of enlistment. (Op., III, 671; IV, 350; VI, 474, 607.) A minor is not bound by his contract, although entered into with the consent of his guardian, after he becomes of age. (Op., IV, 350.)

See note 7.

gent boys to enlist in the United States Navy as provided by law, without making any charge therefor. * * *

Transfer from military to naval service.

July 1, 1864, s. 1, v. 13, p. 342.

SEC. 1421. Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfer shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of military law.

Men to be sent home at expiration of term of enlistment.

SEC. 1422. That it shall be the duty of the commanding officer of any fleet, squadron, or vessel acting singly, when on service, to send to an Atlantic or to a Pacific port of the United States, as their enlistment may have occurred on either the Atlantic or Pacific coast of the United States, in some public or other vessel, all petty-officers and persons of inferior ratings desiring to go there at the expiration of their terms of enlistment, or as soon thereafter as may be, unless, in his opinion, the detention of such persons for a longer period should be essential to the public interests, in which case he may detain them, or any of them, until the vessel to which they belong shall return to such Atlantic or Pacific port. All persons enlisted without the limits of the United States may be discharged, on the expiration of their enlistment, either in a foreign port or in a port of the United States, or they may be detained as above provided beyond the term of their enlistment; and that all persons sent home, or detained by a commanding officer, according to the provisions of this act, shall be subject in all respect to the laws and regulations for the government of the Navy until their return to an Atlantic or Pacific port and their regular discharge; and all persons so detained by such officer, or re-entering to serve until the return to an Atlantic or Pacific port of the vessel to which they belong, shall in no case be held in service more than thirty days after their arrival in said port; and that all persons who shall be so detained beyond their terms of enlistment or who shall, after the termination of their enlistment, voluntarily re-enter to serve until the return to an Atlantic or Pacific port of the vessel to which they belong, and their regular discharge therefrom, shall receive for the time during which they are so detained, or shall so serve beyond their original terms of enlistment, an addition of one-fourth of their former pay: *Provided*, That the shipping-articles shall hereafter contain the substance of this section.

Detention beyond term.

Persons enlisted without limits of United States.

Men subject to regulations until return or discharge.

How long held in service after arrival.

Additional pay for detention.

This section to be contained in shipping articles.

July 17, 1862, s. 17, v. 12, p. 610; Mar. 3, 1875, v. 18, p. 484. See sec. 1572.

Subject to regulations while sent home or detained.

July 17, 1862, s. 17, v. 12, p. 610.

SEC. 1423. All persons sent home, or detained by a commanding officer, according to the provisions of the preceding section, shall be subject in all respects to the laws and regulations for the government of the Navy, until their return to an Atlantic port and their regular discharge.

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*Note* 7.—Similar provisions occur in 1891, Mar. 3, ch. 546, par. 1 (1 Supp. R. S., 931). The introduction of the word "hereafter" determines the character of the legislation as general and permanent, as explained in note (9) to 1893, Feb. 27, ch. 168, par. 7, Supp. R. S. 1892–95, p. 93.

SEC. 1424. Persons so detained by a commanding officer, or re-entering to serve until the return to an Atlantic port of the vessel to which they belong, shall in no case be held in service more than thirty days after their arrival in said port.

Limit of detention.
Idem.

SEC. 1425. The shipping articles shall contain the substance of the three sections next preceding and of section fifteen hundred and seventy-two.

What to be contained in shipping articles.
Idem.

SEC. 1426. Honorable discharges may be granted to seamen, ordinary seamen, landsmen, firemen, coal-heavers, and boys who have enlisted for three years.

Honorable discharge, to whom granted.
Mar. 2, 1855, s. 1, v. 10, p. 627; June 7, 1864, v. 13, p. 120.

SEC. 1427. Honorable discharges shall be granted according to a form prescribed by the Secretary of the Navy.

Feb. 7, 1890.
26 Stat. L., 6.
Form of honorable discharge.
Idem.

That from and after the passage of this act, whenever satisfactory proof is furnished at the Navy Department that any commissioned officer, regular or volunteer, appointed or enlisted man who served in the Navy or the Marine Corps of the United States in the war of eighteen hundred and twelve, the Mexican war, or the war of the rebellion, has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of the Navy shall be authorized to furnish to such commissioned officer, regular or volunteer, appointed or enlisted man, a certificate of discharge in lieu thereof.

Certificates of honorable discharge in Navy or Marine Corps, when original is lost.
R. S., secs 1426, 1427.
Apr. 14, 1890, ch. 80, p. 714.

*Provided*, That such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or any other allowance, or as evidence in any other case.

—not to be evidence in claims.

That the Secretary of War and the Secretary of the Navy be, and they are hereby, authorized and required to issue certificates of discharge or orders of acceptance of resignation, upon application and proof of identity, in the true name of such persons as enlisted or served under assumed names, while minors or otherwise, in the Army and Navy during the war of the rebellion, and were honorably discharged therefrom.

Apr. 14, 1890.
26 Stat. L., 55.
Supp. R. S., p. 714.
Army and Navy.
Discharge to soldiers and sailors who enlisted under assumed names.
R. S., secs. 1342, art. 4, 1426, 1427.

Applications for said certificates of discharge or amended orders of resignation may be made by or on behalf of persons entitled to them;

Applications.

But no such certificate or order shall be issued where a name was assumed to cover a crime or to avoid its consequence.

Exception.

and in time of peace the President may in his discretion, and under such rules and upon such conditions as he may prescribe, permit any enlisted man to purchase his discharge from the Navy or the Marine Corps, the amount received therefrom to be covered into the Treasury. * * *

Mar. 3, 1893.
27 Stat. L., 715.
Supp. R. S., 1892-95., p. 130.
Purchase of discharge by enlisted men of Navy and Marine Corps. R. S., secs. 1426, 1427. See note 8.

*Note 8.*—Similar provision as to the Army is contained in 1890, June 16, ch. 426, sec. 4 (Supp. R. S., 757).

Title 15, chap. 2.

Report of men entitled to honorable discharge.
Mar. 2, 1855, s. 1, v. 10, p. 627.

SEC. 1429. It shall be the duty of every commanding officer of a vessel, on returning from a cruise, and immediately on his arrival in port, to forward to the Secretary of the Navy a list of the names of such of the crew who enlisted for three years as, in his opinion, on being discharged, are entitled to an "honorable discharge" as a testimonial of fidelity and obedience; and he shall grant the same to the persons so designated.

Feb. 8, 1889.

25 Stat. L., 657.
Seamen, etc., in Navy honorably discharged, may have home on receiving-ships for three months, etc.
R. S., secs. 1429, 1573.

That the Secretary of the Navy be, and he is hereby, authorized to permit any person receiving the honorable discharge authorized by section fourteen hundred and twenty-nine of the Revised Statutes to elect a home on board of any of the United States receiving-ships, during any portion of the three months granted by law as the limit of time within which to receive the pecuniary benefit of such discharge, the men so choosing a home to be entitled to one ration per day for their keeping while furnished with such home, but not to pay, other than that authorized by section fifteen hundred and seventy-three of the Revised Statutes of the United States upon re-enlistment:

—amenable to regulations.

*Provided*, That the persons so furnished with a home shall be amenable to such regulations as may be prescribed by the Secretary of the Navy or other competent authority.

To discourage sale of prize-money or wages.
June 30, 1864, s. 12, v. 13, p. 310.

SEC. 1430. Every commanding officer of a vessel is required to discourage his crew from selling any part of their prize-money, bounty-money, or wages, and never to attest any power of attorney for the transfer thereof until he is satisfied that the same is not granted in consideration of money given for the purchase of prize-money, bounty-money, or wages.

See sec. 4643, Prize, Division IV.

Duty as to granting leave and liberty.
Mar. 2, 1855, s. 3, v. 10, p. 627.

SEC. 1431. It shall be the duty of commanding officers of vessels, in granting temporary leave of absence and liberty on shore, to exercise carefully a discrimination in favor of the faithful and obedient.

Title 15, chap. 8.

Pay of enlisted men.
Apr. 18, 1814, s. 1, v. 3, p. 136; Mar. 3, 1847, s. 4, v. 9, p. 173; July 1, 1864, s. 4, v. 13, p. 342; Mar. 3, 1865, s. 2, v. 13, p. 539.

SEC. 1569. The pay to be allowed to petty officers, excepting mates, and the pay and bounty upon enlistment of seamen, ordinary seamen, firemen, and coal-heavers, in the naval service, shall be fixed by the President: *Provided*, That the whole sum to be given for the whole pay aforesaid, and for the pay of officers, and for the said bounties upon enlistments shall not exceed, for any one year, the amount which may, in such year, be appropriated for such purposes.

Additional pay for serving as firemen and coal-heavers.
Mar. 1, 1869, s. 2, v. 15, p. 280.

SEC. 1570. Every seaman, ordinary seaman, or landsman who performs the duty of a fireman or coal-heaver on board of any vessel of war shall be entitled to receive, in addition to his compensation as seaman, ordinary seaman, or landsman, a compensation at the rate of thirty-three cents a day for the time he is employed as fireman or coal-heaver.

Detention beyond term of enlistment.
July 17, 1862, s. 17, v. 12, p. 610.

SEC. 1572. All petty officers and persons of inferior ratings who are detained beyond the terms of service, according to the provisions of section fourteen hundred and twenty-two, or who, after the termination of their service, voluntarily re-enter, to serve until the return to an Atlantic port of the vessel to which they belong, and until their regular

discharge therefrom, shall, for the time during which they are so detained or so serve beyond their original terms of service, receive an addition of one-fourth of their former pay.

Bounty pay for reenlisting. June 7, 1864, v. 13, p. 120; Mar. 2, 1865, s. 2, v. 10, p. 627.

SEC. 1573. If any seaman, ordinary seaman, landsman, fireman, coal-heaver, or boy, being honorably discharged, shall re-enlist for three years, within three months thereafter, he shall, on presenting his honorable discharge, or on accounting in a satisfactory manner for its loss, be entitled to pay, during the said three months, equal to that to which he would have been entitled if he had been employed in actual service.

Crews of wrecked or lost vessels. July 17, 1862, s. 14, v. 12, p. 608.

SEC. 1574. When the crew of any vessel of the United States are separated from such vessel, by means of her wreck, loss, or destruction, the pay and emoluments of such of her officers and men as shall appear to the Secretary of the Navy, by the sentence of a court-martial or court of inquiry, or by other satisfactory evidence, to have done their utmost to preserve her, and, after said wreck, loss, or destruction, to have behaved themselves agreeably to the discipline of the Navy, shall go on and be paid them until their discharge or death.

Crews of vessels taken by an enemy. Idem, s. 15, p. 609.

SEC. 1575. The pay and emoluments of the officers and men of any vessel of the United States taken by an enemy who shall appear, by the sentence of a court-martial or otherwise, to have done their utmost to preserve and defend their vessel, and, after the taking thereof, to have behaved themselves agreeably to the discipline of the Navy, shall go on and be paid to them until their exchange, discharge, or death.

Assignments of wages. June 30, 1864, s. 12, v. 13, p. 310.

SEC. 1576. Every assignment of wages due to persons enlisted in the naval service, and all powers of attorney, or other authority to draw, receipt for, or transfer the same, shall be void, unless attested by the commanding officer and paymaster. The assignment of wages must specify the precise time when they commence.

Title 59, chap. 6.

Who may be buried in national cemeteries. July 17, 1862, s. 18, v. 12, p. 596; June 1, 1872, v. 17, p. 202; Mar. 3, 1873, v. 17, p. 605.

SEC. 4878. All soldiers, sailors, or marines, dying in the service of the United States, or dying in a destitute condition, after having been honorably discharged from the service, or who served during the late war, either in the regular or volunteer forces, may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment.

June 16, 1880.

Machinists in the Navy, discharge of, etc. June 16, 1880, v. 21, p. 290. 21 Stat. L., 290. Supp. R. S., p. 302. Machinists honorably discharged from Navy since November 20, 1879, to receive one-third of year's pay in lieu of other extras, etc.

All men now serving in the Navy who may be discharged as machinists, with continuous-service certificates entitling them to honorable discharge, and those discharged in the said rating with such certificates since the twentieth day of November, eighteen hundred and seventy-nine, shall receive one-third of one year's pay as a machinist for each good-conduct badge they have received, or may receive, not exceeding three in number under the said certificates, the said gratuity to be received in lieu of re-enlistment as a machinist under such certificate, and to be in full and in lieu of all claims against the United States in connection therewith, for extra pay for re-enlisting, or for continuous service, or for enlistment as a petty officer; and the amount necessary to carry out the provisions of this act is hereby

appropriated, out of any money in the Treasury not otherwise appropriated: *Provided*, That nothing herein contained shall be so construed as to prevent the re-enlistment of machinists in the Navy.

Supp. R. S., vol. 2, p. 517.

Allotment of pay by officers Navy and Marine Corps.

23 C. Cls. R., 74

That the Secretary of the Navy be, and he is hereby, authorized to permit officers of the Navy and the Marine Corps to make allotments from their pay, under such regulations as he may prescribe, for the support of their families or relatives, for their own savings, or for other proper purposes, during such time as they may be absent at sea, on distant duty, or under other circumstances warranting such action.

Feb. 9, 1889.

25 Stat. L., 657.

Supp. R. S., pp. 640-1.

Petty officers and seamen of Navy may deposit savings with paymasters. 19 Opins., 616.

That any enlisted man or appointed petty officer of the Navy may deposit his savings, in sums not less than five dollars, with the paymaster upon whose books his account is borne; and he shall be furnished with a deposit-book, in which the said paymaster shall note, over his signature, the amount, date, and place of such deposit.

Money deposited to be accounted for as public funds.

The money so deposited shall be accounted for in the same manner as other public funds, and shall pass to the credit of the appropriation for "Pay for the Navy," and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased sailor, and that such deposit be exempt from liability for such sailor's debts:

Liability of Government.

*Provided*, That the Government shall be liable for the amount deposited to the person so depositing the same.

Interest.

SEC. 2. That for any sums not less than five dollars so deposited for the period of six months or longer, the sailor, on his final discharge, shall be paid interest at the rate of four per centum per annum.

Regulations by Sec. of Navy.

SEC. 3. That the system of deposits herein established, shall be carried into execution under such regulations as may be established by the Secretary of the Navy.

## VESSELS OF THE NAVY.


Sec.
1428. Officers of vessels to be citizens of the United States.
1437. Officers to inspect vessels under War Department.
1529. Four classes; their commanders.
1530. How rated.
1531. Rule for naming.
1532. Two vessels not to bear the same name.
1533. Names of purchased vessels.
1534. Vessels kept in service in time of peace.
1535. How officered and manned.
1536. Cruising to assist distressed navigators.
1537. Patented articles connected with marine engines.
1538. Repairs on hull and spars.
1539. Repairs on sails and rigging.
Sec.
1540. Sale of vessels unfit to be repaired.
1541. Sale of unserviceable vessels and materials.
—— Unfit for service; removal from Register.
—— Sale of vessels stricken from Register.
—— Restriction on repairs.
1552. Coal depots for vessels.
4293. Suppression of piracy.
4686. Employment on coast survey.
Act June 20, 1874. Marine schools.
Act June 14, 1879. Hulks for quarantine purposes.
Act Aug. 5, 1882. Steam cruisers for the Navy.
Ibid. Double-turreted monitors.
Act June 20, 1874. Accidents to vessels.


Title 15, chap. 2.

Officers to be citizens of United States.

SEC. 1428. The officers of vessels of the United States shall in all cases be citizens of the United States.

June 28, 1864, s. 1, v. 13, p. 201.

SEC. 1437. The President may detail, temporarily, three competent naval officers for the service of the War Department in the inspection of transport vessels, and for such other services as may be designated by the Secretary of War.

Officers for service of War Department. Feb. 12, 1862, v. 12, p. 338.

SEC. 1529. The vessels of the Navy of the United States shall be divided into four classes, and shall be commanded as nearly as may be as follows:

First rates, by commodores; second rates, by captains; third rates, by commanders; fourth rates, by lieutenant-commanders.

Title 15, chap. 6.

Four classes; their commanders. July 16, 1862, s. 3, v. 12, p. 583.

SEC. 1530. Steamships of forty guns or more shall be classed as first rates, those of twenty guns and under forty as second rates, and all those of less than twenty guns as third rates.

How rated. June 12, 1858, s. 5, v. 11, p. 319.

SEC. 1531. The vessels of the Navy shall be named by the Secretary of the Navy, under the direction of the President, according to the following rule:

Sailing-vessels of the first class shall be named after the States of the Union, those of the second class after the rivers, those of the third class after the principal cities and towns, and those of the fourth class as the President may direct.

Steamships of the first class shall be named after the States of the Union, those of the second class after the rivers and principal cities and towns, and those of the third class as the President may direct.

Rule for naming. Mar. 3, 1819, s. 1, v. 3, p. 538; June 12, 1858, s. 5, v. 11, p. 319.

SEC. 1532. Care shall be taken that not more than one vessel in the Navy shall bear the same name.

Two vessels not to bear the same name. Idem.

SEC. 1533. The Secretary of the Navy may change the names of any vessels purchased for the Navy by authority of law.

Names of purchased vessels. Aug. 5, 1861, s. 2, v. 12, p. 316.

SEC. 1534. The President is authorized to keep in actual service in time of peace, such of the public armed vessels as, in his opinion, may be required by the nature of the service, and to cause the residue thereof to be laid up in ordinary in convenient ports.

Vessels kept in service in time of peace. Apr. 21, 1806, s. 2, v. 2, p. 390.

That the Secretary of the Navy be, and is hereby, authorized and empowered to loan temporarily to any State, upon the written applicatiom of the governor thereof, a vessel of the Navy, to be selected from such vessels as are not suitable or required for general service, together with such of her apparel, charts, books, and instruments of navigation as he may deem proper;

Aug. 3, 1894. 28 Stat. L., 219. Naval militia. Vessels, etc., may be lent to States for drill, etc. R. S., sec. 1534. June 20, 1874, ch. 339 (1 Supp. R. S., 25).

said vessel to be used only by the regularly organized naval militia of the State for the purposes of drill and instruction:

—how to be used.

*Provided*, That when the organization of the naval militia of such State shall be abandoned, or when the interests of the naval service shall so require, such vessel, together with her apparel, charts, books, and instruments of navigation, shall be immediately restored to the custody of the Secretary of the Navy:

—when to be returned.

Ship keepers to be detailed.
—to be additional to limit allowed by law.
Mar. 3, 1893, ch. 212, par. 8, *ante*, p. 131.

*And provided further*, That when such loan is made to the governor of any State, the Secretary of the Navy is authorized to detail from the enlisted force of the Navy a sufficient number of men, not exceeding six for any vessel, as ship-keepers,

the men so detailed to be additional to the number of enlisted men allowed by law for the naval establishment,

—how to be selected.

and in making details for this service preference shall be given to those men who have served twenty years or more in the Navy.

How officered and manned.
Idem, s. 3.

SEC. 1535. Vessels in actual service, in time of peace, shall be officered and manned as the President may direct, subject to the provisions of section fifteen hundred and twenty-nine.

Cruising to assist distressed navigators.
Dec. 22, 1837, v. 5, p. 208.

SEC. 1536. The President may, when the necessities of the service permit it, cause any suitable number of public vessels adapted to the purpose to cruise upon the coast in the season of severe weather and to afford such aid to distressed navigators as their circumstances may require; and such public vessels shall go to sea fully prepared to render such assistance.

Patented articles connected with marine engines.
July 18, 1861, s. 3, v. 12, p. 268.

SEC. 1537. No patented article connected with marine engines shall hereafter be purchased or used in connection with any steam-vessels of war until the same shall have been submitted to a competent board of naval engineers, and recommended by such board, in writing, for purchase and use.

Supp. R. S., vol. 2, p. 517.
Model tank for experiments.

For making plans, examining and preparing the ground and other preliminary work toward the construction of a model tank, with all buildings and appliances, to be built upon the grounds of the navy yard at Washington, District of Columbia, under the Bureau of Construction and Repair of the Navy Department, which shall conduct therein the work of investigating and determining the most suitable and desirable shapes and forms to be adopted for United States naval vessels, seven thousand five hundred dollars:

Experiments by private builders.

*Provided*, That upon the authorization of the Secretary of the Navy experiments may be made at this establishment for private shipbuilders, who shall defray the cost of material and of labor of per diem employees for such experiments:

—results confidential.

*And provided further*, That the results of such private experiments shall be regarded as confidential and shall not be divulged without the consent of the shipbuilder for whom they may be made. * *

Repairs on hull and spars.
Feb. 21, 1861, s. 1, v. 12, p. 147.
See Aug. 5, 1882, and Mar. 3, 1883.

SEC. 1538. Not more than three thousand dollars shall be expended at any navy-yard in repairing the hull and spars of any vessel, until the necessity and expediency of such repairs and the probable cost thereof are ascertained and reported to the Navy Department by an examining board, which shall be composed of one captain or commander in the Navy, designated by the Secretary of the Navy, the naval constructor of the yard where such vessel may be ordered for repairs, and two master workmen of said yard, or one master workman and an engineer of the

Navy, according to the nature of the repairs to be made. Said master workmen and engineer shall be designated by the head of the Bureau of Construction and Repair.

Repairs on sails and rigging. Idem. See Aug. 5, 1882, and Mar. 3, 1883.

SEC. 1539. Not more than one thousand dollars shall be expended in repairs on the sails and rigging of any vessel, until the necessity and expediency of such repairs and the estimated cost thereof have been ascertained and reported to the Navy Department by an examining board, which shall be composed of one naval officer, designated by the Secretary of the Navy, and the master rigger and the master sail-maker of the yard where such vessel may be ordered.

Sale of vessels unfit to be repaired. Apr. 21, 1806, s. 3, v. 2, p. 402. See note 1. See Aug. 5, 1882, and Mar. 3, 1883.

SEC. 1540. The President may direct any armed vessel of the United States to be sold when, in his opinion, such vessel is so much out of repair that it will not be for the interest of the United States to repair her.

Sale of unserviceable vessels and materials. Mar. 23, 1872, s. 2, v. 17, p. 154. See Aug. 5, 1882, and Mar. 3, 1883. See "Sale of property and materials," sec. 3618.

SEC. 1541. The Secretary of the Navy is authorized and directed to sell, at public sale, such vessels and materials of the United States Navy as, in his judgment, cannot be advantageously used, repaired, or fitted out; and he shall, at the opening of each session of Congress, make a full report to Congress of all vessels and materials sold, the parties buying the same, and the amount realized therefrom, together with such other facts as may be necessary to a full understanding of his acts.

Aug. 5, 1882.

Examination of naval vessels. Aug. 5, 1882, 22 Stat. L., p. 296. [Naval appropriation act.]

It shall also be the duty of the Secretary of the Navy, as soon as may be after the passage of this act, to cause to be examined by competent boards of officers of the Navy, to be designated by him for that duty, all vessels belonging to the Navy not in actual service at sea, and vessels at sea as soon as practicable after they shall return to the United States, and hereafter all vessels on their return from foreign stations, and all vessels in the United States as often as once in three years, when practicable; and said boards shall ascertain and report to the Secretary of the Navy, in writing, which of said vessels are unfit for further service, or, if the same are unfinished in any navy-yard, those which cannot be finished without great and disproportionate expense, and shall in such report state fully the grounds and reasons for their opinion. And it shall be the duty of the Secretary of the Navy, if he shall concur in opinion with said report, to strike the name of such vessel or vessels from the Navy Register and report the same to Congress.

Mar. 3, 1883.

22 Stat. L., 582. Appraisement of vessels stricken from Register. Aug. 5, 1882, ch. 391, s. 2.

It shall be the duty of the Secretary of the Navy to cause to be appraised, in such manner as may seem best, all vessels of the Navy which have been stricken from the Navy Register under the provisions of the act making appropriations for the naval service for the fiscal year ending June thirtieth, eighteen hundred and eighty-three, and for other purposes, approved August fifth, eighteen hundred and eighty-two. And if the said Secretary shall deem it for the best interest of the United States to sell any such vessel or

*Note 1.*—A vessel condemned for naval purposes can not be exchanged for another, notwithstanding the change might be of advantage to the public service. (Op., XIV, 368.)

Sale of such vessels.
R. S., secs. 1540, 1541.

vessels, he shall, after such appraisal, advertise for sealed proposals for the purchase of the same, for a period not less than three months, in such newspapers as other naval advertisements are published, setting forth the name and location and the appraised value of such vessel, and that the same will be sold, for cash, to the person or persons or corporation or corporations offering the highest price therefor above the appraised value thereof; and such proposals shall be opened on a day and hour and at a place named in said advertisement, and record thereof shall be made. The Secretary of the Navy shall require to accompany each bid or proposal a deposit in cash of not less than ten per centum of the amount of the offer or proposal, and also a bond, with two or more sureties to be approved by him, conditioned for the payment of the remaining ninety per centum of the amount of such offer or proposal within the time fixed in the advertisement. And in case default is made in the payment of the remaining ninety per centum, or any part thereof, the Secretary, within the prescribed time thereof, shall advertise and resell said vessel under the provisions of this act. And in that event said cash deposit of ten per centum shall be considered as forfeited to the Government, and shall be applied, first, to the payment of all costs and expenditures attending the advertisement and resale of said vessel; second, to the payment of the difference, if any, between the first and last sale of said vessel; and the balance, if any, shall be covered into the Treasury: *Provided, however*, That nothing herein contained shall be construed to prevent a suit upon said bond for breach of any of its conditions. Any vessel sold under the foregoing provisions shall be delivered to the purchaser upon the full payment to the Secretary of the Navy of the amount of such proposal or offer; and the net proceeds of such sale shall be covered into the Treasury. But no vessel of the Navy shall hereafter be sold in any other manner than herein provided, or for less than such appraised value, unless the President of the United States shall otherwise direct in writing. [In case any vessel now in process of construction in any navy-yard has been or shall be found to be unworthy of being completed, and has been and shall be condemned under the provisions of said act, and cannot properly be sold, and it becomes necessary to remove the same, the cost of such removal shall be paid out of the net proceeds derived from the sale of other vessels hereby authorized to be sold.]

Requirements from bidders.

—to be resold in default, etc.

—deposit to be forfeited, etc.

—without prejudice to suit.

When to be delivered to purchaser.

Removal of condemned vessels.
Mar. 3, 1883, s. 5. 22 Stat. L., p. 600.

Restriction on repair of wooden vessels.
Mar. 3, 1883, 22 Stat. L., p. 476. [Naval appropriations act.]

That no part of this sum [appropriation for preservation of vessels, etc.] shall be applied to the repairs of any wooden ship when the estimated cost of such repairs, to be appraised by a competent board of naval officers, shall exceed twenty per centum of the estimated cost, appraised in like manner, of a new ship of the same size and like material: *Provided further*, That nothing herein contained shall deprive the Secretary of the Navy of the authority to order repairs of ships damaged in foreign waters or on the high seas, so far as may be necessary to bring them home.

That no part of said sum [appropriation for repairs of machinery, etc.] shall be applied to the repair of engines and machinery of wooden ships where the estimated costs of such repair shall exceed ten per centum of the estimated cost of new engines and machinery of the same character and power, but nothing herein contained shall prevent the repair or building of boilers for wooden ships, the hulls of which can be fully repaired for ten per centum of the estimated cost of a new ship of the same size and material.

Restriction on repairs of engines, etc.
Mar. 3, 1883, 22 Stat. L., p. 477.

SEC. 1552. The Secretary of the Navy may establish, at such places as he may deem necessary, suitable depots of coal, and other fuel, for the supply of steamships of war.

Title 15, chap. 7.
Coal depots.
Aug. 31, 1842, s. 7, v. 5, p. 577.

SEC. 4293. The President is authorized to employ so many of the public armed vessels as in his judgment the service may require, with suitable instructions to the commanders thereof, in protecting the merchant-vessels of the United States and their crews from piratical aggressions and depredations.

Title 48, chap. 8.
Public vessels to suppress piracy. See piracy, Slave Trade, etc., Division IV.
Mar. 3, 1819, s. 1, v. 3, p. 510; Jan. 30, 1823, v. 3, p. 721. See also act of Aug. 6, 1894, amending sec. 5365 and 5366, Title Merchant Vessels, defining crimes at sea.

SEC. 4686. The President is authorized, for any of the purposes of surveying the coast of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of this Title.

Title 56.
Power to employ vessels.
Feb. 10, 1807, s. 3, v. 2, p. 414; Apr. 14, 1818, s. 1, v. 3, p. 425.
See note 2.
See Coast Survey, Division IV.

The Secretary of the Navy, to promote nautical education, is hereby authorized and empowered to furnish, upon the application in writing of the Governor of the State, a suitable vessel of the Navy, with all her apparel, charts, books, and instruments of navigation, provided the same can be spared without detriment to the naval service, to be used for the benefit of any nautical school, or school or college having a nautical branch, established at each or any of the ports of New York, Boston, Philadelphia, Baltimore, Norfolk, San Francisco, *Wilmington*, *Charleston*, *Savannah*, *Mobile*, *New Orleans*, *Baton Rouge*, *Galveston*, *and in Narragansett Bay*, upon the condition that there shall be maintained, at such port, a school or branch of a school for the

June 20, 1874.
18 Stat. L., 121. Supp. R. S., p. 25.
Secretary of the Navy may furnish vessels for marine schools.
See Naval Academy, Division I.
Condition.

*Note 2.*—In naval "parlance," "cruise" means the whole period between the time when a vessel goes to sea and when she returns to the place where her crew is paid off and she is put out of commission. (Op., IX, 375, July 27, 1859, Black.)

Government vessels are not required to employ and pay branch pilots upon entering the ports and harbors of the United States. The exemption extends to all public vessels, whether armed or not. (Op., IV, 532, Sept. 9, 1846, Mason.)

The penalties imposed by State laws for piloting vessels without due license from the State have no application to persons employed as pilots on board public vessels of the United States, the latter vessels being within the exclusive jurisdiction of the United States. (Op., XVI, 647, Oct. 22, 1879.)

The term "public vessels" does not apply to vessels of the Navy alone. Within the meaning of the inspection and navigation laws public vessels are those owned by the United States and those used by them for public purposes. Those laws warrant no distinction between public vessels under the control of the Navy Department and public vessels under the control of any other Department of the Government. Unlicensed pilots and engineers can be lawfully employed on them. (Op., XIII, p. 249, Hoar, June 1, 1870.)

instruction of youths in navigation, seamanship, marine enginery and all matters pertaining to the proper construction, equipment and sailing of vessels or any particular branch thereof: And the President of the United States is hereby authorized, when in his opinion the same can be done without detriment to the public service, to detail proper officers of the Navy as superintendents of, or instructors in, such schools: *Provided*, That if any such school shall be discontinued, or the good of the naval service shall require, such vessels shall be immediately restored to the Secretary of the Navy, and the officers so detailed recalled: *And provided further*, That no person shall be sentenced to, or received at, such schools as a punishment or commutation of punishment for crime.

Officers of Navy may be detailed as instructors, etc., for nautical schools.
Restoration of vessels.
Schools not for penal purposes.
June 20, 1874, v. 18, p. 121; Mar. 3, 1881, v. 21, p. 505.

June 14, 1879.

Vessels or hulks for quarantine purposes.
June 14, 1879, v. 21, p. 50.

That the Secretary of the Navy be, and he is hereby, authorized, in his discretion, at the request of the National Board of Health, to place gratuitously, at the disposal of the commissioners of quarantine, or the proper authorities at any of the ports of the United States, to be used by them temporarily for quarantine purposes, such vessels or hulks belonging to the United States as are not required for other uses of the national government, subject to such restrictions and regulations as the said Secretary may deem necessary to impose for the preservation thereof.

June 20, 1874.

Report of accidents, etc., to vessels.
June 20, 1874, s. 10, v. 18, p. 128.
See notes 3 and 4.

* * * "whenever any vessel of the United States has sustained or caused any accident involving the loss of life, the material loss of property, or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency, the managing owner, agent, or master of such vessel, shall within five days after the happening of such accident or damage, or as soon thereafter as possible, send, by letter to the collector of customs of the district wherein such vessel belongs or of that within which such accident or damage occurred, a report thereof, signed by such owner, agent, or master, stating the name and official number (if any) of the vessel, the port to which she belongs, the place where she was, the nature and probable occasion of the casualty, the number and names of those lost, and the estimated amount of loss or damage to the vessel or cargo; and shall furnish, upon the request of either of such collectors of customs, such other information concerning the vessel, her cargo, and the casualty as may be called for; and if he neglect or refuse to comply with the foregoing requirements after a reasonable time, he shall incur a penalty of one hundred dollars." * * *

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*Note 3.*—The above act is regarded as applying to vessels of the Navy, and a report should be made as indicated, in case of loss or accident, to the collector, from whom the necessary blanks can be procured.

*Note 4.*—Where the fault is wholly on one side, the party in fault must bear his own loss, and compensate the other party, if such party have sustained any damage. If neither be in fault, neither is entitled to compensation from the other. If both are in fault, the damages will be divided. (Otto, S. C., 102, p. 203.)

## VOLUNTEER SERVICE.

Sec.
1411. Acting assistant surgeons.
1412. Credit for volunteer service.
1559. Pay of volunteer service.
1600. Credit to marine officers for volunteer service.
—— Acting assistant surgeons allow only in case of war.
—— Credit for continuous service.

SEC. 1411. The Secretary of the Navy may appoint, for temporary service, such acting assistant surgeons as the exigencies of the service may require, who shall receive the compensation of assistant surgeons.

Title 15, chap. 1.

Acting assistant surgeons.
July 15, 1870, s. 13, v. 16, p. 334; Mar. 3, 1865, s. 6, v. 13, p. 539. See Feb. 15, 1879.

SEC. 1412. Officers who have been, or may be, transferred from the volunteer service to the Regular Navy shall be credited with the sea service performed by them as volunteer officers, and shall receive all the benefits of such duty in the same manner as if they had been, during such service, in the Regular Navy.

Credit for volunteer sea service.
Mar. 2, 1867, s. 3, v. 14, p. 516.
See Aug. 5, 1882, and Mar. 3, 1883.

SEC. 1559. When a volunteer naval service is authorized by law, the officers therein shall be entitled to receive the same pay as officers of the same grades, respectively, in the Regular Navy.

Title 15, chap. 8.

Pay volunteer service.
July 16, 1862, s. 20, v. 12, p. 587.

SEC. 1600. All marine officers shall be credited with the length of time they may have been employed as officers or enlisted men in the volunteer service of the United States.

Title 15, chap. 9.

Credit to marine officers.
Mar. 2, 1867, s. 3, v. 14, p. 516.

That from and after the passage of this act, the Secretary of the Navy shall not appoint acting assistant surgeons for temporary service, as authorized by section fourteen hundred and eleven, Revised Statutes, except in case of war.

Feb. 15, 1879.

Acting assistant surgeons only in time of war.
See note 1.

And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer army or navy.

Mar. 3, 1883.

Credit for service in volunteer Army or Navy.
Aug. 5, 1882, 22 Stat. L., p. 287; Mar. 3, 1883, 22 Stat. L., p. 473.
Credit of time for regular volunteer and other service.
19 C. Cls., 611, 621; 21 C. Cls., 20, 332; 22 C. Cls., 140; 23 C. Cls., 90, 181; 120 U. S., 60, 249; 138 U. S., 293.
See note 2.

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*Note 1.*—An act approved Feb. 15, 1879, v. 20, p. 294, abolished the volunteer Navy of the United States; providing for the transfer of some of them to the Regular Navy. Mates were not considered as coming within its provisions.

*Note 2.*—Credit for volunteer service under section 1412 of the Revised Statutes "as an acting third assistant engineer, is of no benefit to the officer, so far as regards promotion to, or pay in, the grade of passed assistant engineer in the Regular Navy;" can not be used to make up the period of sea service required for promotion from the grade of second or assistant engineer to that of first or passed assistant. (Op., June, 1882. Webster's Case.)

This provision (sec. 1412) was designed to give the transferred officers the free benefit of their former sea service, in so far as it might go to complete the period of such service required in their respective grades previous to examination for promotion, and in so far as it ought properly to be taken into account in the matter of assignment to duty, and it confers no advantages beyond these. A volunteer officer

## WARRANT OFFICERS.

Sec.
1405. Number and appointment of.
1406. Title.
1407. Promotion of seamen to warrant officers.
1409. Not to discharge from enlistment.
1416. Gunners as keepers of magazines.
1417. Preference to enlisted boys.
1438. As naval storekeepers.
1439. Bonds as storekeepers.
1491. Rank.
1556. Pay.

Title 15, chap. 1.

Number and appointment of.
Apr. 21, 1806, s. 3, v. 2, p. 390; Aug. 4, 1842, s. 1, v. 5, p. 500; Mar. 3, 1847, s. 1, v. 9, p. 172.

SEC. 1405. The President may appoint for the vessels in actual service, as many boatswains, gunners, sailmakers, and carpenters as may, in his opinion, be necessary and proper.

Title.
July 2, 1864, s. 2, v. 13, p. 373.
See retirement of warrant officers, Title "Retirement."

SEC. 1406. Boatswains, gunners, carpenters, and sailmakers shall be known and shall be entered upon the Naval Register as "warrant officers in the naval service of the United States."

Promotion of seamen to warrant officers.
May 17, 1864, s. 3, v. 13, p. 79.

SEC. 1407. Seamen distinguishing themselves in battle, or by extraordinary heroism in the line of their profession, may be promoted to forward warrant officers, upon the recommendation of their commanding officer, approved by the flag-officer and Secretary of the Navy. And upon such recommendation they shall receive a gratuity of one hundred dollars and a medal of honor, to be prepared under the direction of the Navy Department.

Rating not to discharge.
May 17, 1864, s. 3, v. 13, p. 79; Mar. 3, 1865, s. 3, v. 13, p. 539.

SEC. 1409. The rating of an enlisted man as a mate, or his appointment as a warrant officer, shall not discharge him from his enlistment.

Gunners as keepers of magazines.
Aug. 10, 1846, s. 1, v. 9, p. 98.

SEC. 1416. The Secretary of the Navy is authorized, when in his opinion the public interest will permit it, to discontinue the office or employment of * * * the keeper of the magazine employed at any navy-yard, and to require the duties of the keeper of the magazine to be performed by gunners.

Preference in appointment to be given to apprentices, etc.
May 12, 1879, v. 21, p. 3.

See note 1.

SEC. 1417. * * * In the appointment of warrant officers in the naval service of the United States, preference shall be given to men who have been honorably discharged upon the expiration of an enlistment as an apprentice or boy, to serve during minority, and re-enlisted within three months after such discharge, to serve during a term of three or more years: *Provided further*, That nothing in this act shall be held to abrogate the provisions of section fourteen hundred and seven of the Revised Statutes of the United States.

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transferred to the Regular Navy is not entitled to hold a commission dated as of the date of his volunteer commission, but he must take his place upon the Register according to the rank given him by his commission as an officer of the Regular Navy. (Op., XIV, 191, 358, and Aug. 11, 1881; Gen. Order 275.)

To entitle an officer to credit for sea service, under the act of March 2, 1867, he must have been in the volunteer Navy at the time of his appointment to the Regular Navy. Where he ceased to be an officer in the volunteer Navy prior to such appointment, however brief the interval, he does not come within the provisions referred to. (Op., XIV, 142, Nov. 20, 1872. Gray's Case.)

The act of March 3, 1883, *supra*, is to be considered in connection with the foregoing opinions which were rendered prior to its passage.

*Note 1.*—See act August 1, 1894, extending provisions of law relating to retirement of warrant officers to officers now serving as mates in Navy, Title "Mates."

Title 15, chap. 2.

Acting as store-keepers.
June 17, 1844, s. 1, v. 5, p. 700; Mar. 3, 1847, s. 3, v. 9, p. 172.
See sec. 1414, under naval storekeepers.

SEC. 1438. The Secretary of the Navy shall order a suitable commissioned or warrant officer of the Navy, except in the case provided in section fourteen hundred and fourteen, to take charge of the naval stores for foreign squadrons at each of the foreign stations where such stores may be deposited, and where a store-keeper may be necessary.

Bonds of.
June 17, 1844, s. 1, v. 5, p. 700.

SEC. 1439. Every officer so acting as store-keeper on a foreign station shall be required to give a bond, in such amount as may be fixed by the Secretary of the Navy, for the faithful performance of his duty.

Title 15, chap. 4.

Rank.
July 2, 1864, s. 1, v. 13, p. 373; Mar. 3, 1883, P. E. L., p. 472.

SEC. 1491. The President may, if he shall deem it conducive to the interests of the service, give assimilated rank to boatswains, gunners, carpenters, and sailmakers, as follows: After five years' service, to rank with ensigns, and after ten years' service to rank with *lieutenants of the junior grade.*

Title 15, chap. 8.

Pay.
July 15, 1870, s. 3, v. 16, p. 332.

SEC. 1556. * * * Boatswains, gunners, carpenters, and sail-makers, during the first three years after date of appointment, when at sea, one thousand two hundred dollars; on shore duty, nine hundred dollars; on leave, or waiting orders, seven hundred dollars; during the second three years after such date, when at sea, one thousand three hundred dollars; on shore duty, one thousand dollars; on leave, or waiting orders, eight hundred dollars; during the third three years after such date, when at sea, one thousand four hundred dollars; on shore duty, one thousand three hundred dollars; on leave, or waiting orders, nine hundred dollars; during the fourth three years after such date, when at sea, one thousand six hundred dollars; on shore duty, one thousand three hundred dollars; on leave, or waiting orders, one thousand dollars; after twelve years from such date, when at sea, one thousand eight hundred dollars; on shore duty, one thousand six hundred dollars; on leave, or waiting orders, one thousand two hundred dollars.

## DIVISION II.

## MARINE CORPS.

### ORGANIZATION, ETC.

Sec.
1135. Camp equipage of detachments serving with the Army.
1143. Rations to detachments serving with Army.
1342. Art. of War 78. Association with Army on courtsmartial.
1342. Art. of War 122. Command when different corps join.
1421. Transfer of enlisted men from Army.
1596. Number of.
1597. What commissions and promotions not affected by number fixed.
1598. Staff.
1599. Qualifications for appointment.
1600. Credit for volunteer service.
1601. Rank of commandant.
1602. Staff rank.
1603. Relative rank with the Army
—— Judge-Advocate-General.
Sec.
1604. Brevets. [1209-11-12-64, Army.]
1605. Advancement in number.
1606. Promotion when grade is full.
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1608. Enlistments.
1609. Oath.
1342. Art. 2. Oath.
1610. Exemption from arrest.
1611. Companies and detachments.
1616. Services on armed vessels.
1617. Marine officers not to command navy-yards or vessels.
1618. Marines substituted for landsmen.
1619. Duty on shore.
1620. Regulations.
1621. Subject to laws governing the Navy, except when serving with the Army.
—— Act Jan. 28, 1893. Post-traders.
1624. Desertion by resignation.

Title 14, chap. 1.

Supplies to naval and marine detachments.
Dec. 15, 1814, ss. 1, 2, v. 3, p. 151.

SEC. 1135. The officers of the Quartermaster's Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in co-operation with land troops, and during the time such detachment is so acting or proceeding to act, furnish the officers and seamen with camp equipage, together with transportation for said officers, seamen, and marines, their baggage, provisions, and cannon, and shall furnish the naval officer commanding any such detachment, and his necessary aids, with horses, accouterments, and forage.

Rations to detachments with the Army.
Dec. 15, 1814, s. 1, v. 3, p. 151.

SEC. 1143. The officers of the Subsistence Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in co-operation with the land troops and during the time such detachment is so acting or proceeding to act, furnish rations to the officers, seamen, and marines of the same.

Title 14, chap. 5.

Marine and Regular Army officers associated on courts.
June 30, 1834, s. 2, v. 4, p. 713.

SEC. 1342. ART. of WAR 78. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.

Command when different corps happen to join.
Mar. 3, 1863, s. 27, v. 12, p. 736; Mar. 3, 1863, s. 25, v. 12, p. 754.

SEC. 1342. ART. of WAR 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or Militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case.

SEC. 1421. Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfers shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of military law.

Title 15, chap. 1.

Transfer from military to naval service.

July 1, 1864, s. 1, v. 13, p. 342.

SEC. 1596. The Marine Corps of the United States shall consist of one commandant, *with the rank and pay of a colonel*, one colonel, two lieutenant-colonels, four majors, one adjutant and inspector, one paymaster, one quartermaster, two assistant quartermasters, twenty captains, thirty first lieutenants, thirty second lieutenants, one sergeant-major, one quartermaster-sergeant, one drum-major, one principal musician, two hundred sergeants, two hundred and twenty corporals, thirty musicians for a band, sixty drummers, sixty fifers, and twenty-five hundred privates.

Title 15, chap. 2.

Number of.

July 25, 1861, s. 7, v. 12, p. 275; Mar. 2, 1867, s. 7, v. 14, p. 517; June 6, 1874, v. 18, p. 58.

See note 1.

* * * *Provided*, That the office of commandant of the Marine Corps having the rank of a brigadier-general of the Army shall continue until a vacancy shall occur in the same, and no longer; (2) and when such vacancy shall occur in said office, immediately thereupon all laws and parts of laws creating said office shall become inoperative, and shall, by virtue of this act, from thenceforth be repealed.

June 6, 1874.

18 Stat. L., 58. Supp. R. S., p. 10.

Commandant of Marine Corps. Repeal of law fixing rank as brigadier-general.

See note 2.

SEC. 1597. The provisions of the preceding section shall not preclude the advancement of any officer to a higher grade for distinguished conduct in conflict with the enemy, or for extraordinary heroism in the line of his profession, as authorized by sections sixteen hundred and five and sixteen hundred and seven.

When number may be increased by promotion.

July 25, 1861, s. 2, v. 12, p. 275; July 16, 1862, s. 9, v. 12, p. 584; Jan. 24, 1865, s. 2, v. 13, p. 424.

And from and after the passage of this act there shall be no appointments, except by promotion, to fill vacancies occurring in the list of commissioned officers of the Marine Corps until the number of such officers shall have been reduced, by casualties or otherwise, below seventy-five as fixed by the act approved June thirtieth, eighteen hundred and seventy-six; and after the number of officers shall be reduced as above provided, the whole number of commissioned officers on the active list in the Marine Corps shall not exceed seventy-five.

Jan. 30, 1885.

Supp., 1874–1891, p. 473.

Appointments in the Marine Corps limited.

June 30, 1876, ch. 159, (19 Stat. L., 71).

This repeals sec. 1601.

SEC. 1598. The staff of the Marine Corps shall be separate from the line.

Staff.

Mar. 2, 1847, s. 3, v. 9, p. 154; June 30, 1834, s. 6, v. 4, p. 713.

SEC. 1599. [Superseded by act of August 5, 1882, as follows:] All the undergraduates at the Naval Academy shall

Appointments.

Aug. 5, 1882, s. 1, 22 Stat. L., p. 285.

*Note 1.*—The commandant is stationed at the headquarters of the Marine Corps, Washington, D. C.; is responsible to the Secretary of the Navy for the general efficiency and discipline of the corps, and under his direction issues, through the office of the adjutant and inspector of the corps, orders for the movement of officers and troops, and such general orders and instructions for their guidance as may be necessary. In the absence of the commandant on duty, the business of his office is conducted by the adjutant and inspector, as "by order of the commandant;" in case of his absence on leave, disability, retirement, or death, his duties are performed by the adjutant and inspector, as "by direction of the Secretary of the Navy."

*Note 2.*—The office became vacant November 1, 1876, and the commandant was appointed as provided by this act.

See act Mar. 2, 1889, Title "Naval cadets," not less than one cadet to be assigned yearly to Marine Corps.

hereafter be designated and called "naval cadets"; and from those who successfully complete the six years' course appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line and engineer corps of the Navy and of the Marine Corps: *And provided further*, That no greater number of appointments into these grades shall be made each year than shall equal the number of vacancies which has occurred in the same grades during the preceding year; such appointments to be made from the graduates of the year at the conclusion of their six years' course, in the order of merit, as determined by the academic board of the Naval Academy; the assignment to the various corps to be made by the Secretary of the Navy upon the recommendation of the academic board.

Credit for volunteer service. Mar. 2, 1867, s. 3, v. 14, p. 516. See Aug. 5, 1882, Division I, under Volunteer Service.

SEC. 1600. All marine officers shall be credited with the length of time they may have been employed as officers or enlisted men in the volunteer service of the United States.

Rank and pay of commandant, 18 Stat. L., 58; 19 Stat. L., 65; 22 Stat. L., 293. Mar. 2, 1867, s. 7, v. 14, p. 517; June 6, 1874, v. 18, p. 58. See note 3.

SEC. 1601. The commandant of the Marine Corps shall have the rank and pay of a *colonel, and shall be appointed by selection by the President from the officers of said corps.*

Staff rank. Mar. 2, 1847, s. 3, v. 9, p. 154; Feb. 27, 1877, v. 19, p. 24.

SEC. 1602. The adjutant and inspector, the paymaster, and the quartermaster shall have the rank of major; each assistant quartermaster shall have the rank of captain.

Relative rank with the Army. June 30, 1834, s. 4, v. 4, p. 713. See 1466, Rank and Precedence, Division I.

SEC. 1603. The officers of the Marine Corps shall be, in relation to rank, on the same footing as officers of similar grades in the Army.

June 8, 1880.

Judge-advocate-general.

That the President of the United States be, and he is hereby, authorized to appoint, for the term of four years, by and with the advice and consent of the Senate, from the officers of the Navy or the Marine Corps, a judge-advocate-general of the Navy, with the rank, pay, and allowances of a captain in the Navy or a colonel in the Marine Corps, as the case may be. And the office of the said judge-advocate-general shall be in the Navy Department, where he shall, under the direction of the Secretary of the Navy, receive, revise, and have recorded the proceedings of all courts-martial, courts of inquiry, and boards for the examination of officers for retirement and promotion in the naval service, and perform such other duties as have heretofore been performed by the solicitor and naval judge-advocate-general.

Office in the Navy Department. June 8, 1880, v. 21, p. 164, ch. 129.

June 5, 1896.

29 Stat. L., 251. Supp. vol. 2, p. 500. Navy. Judge-advocate-general's pay.

That the Act "to authorize the President to appoint an officer of the Navy or the Marine Corps to perform the duties of solicitor and judge-advocate-general, and so forth, and to fix the rank and pay of such officer," approved June eighth, eighteen hundred and eighty, is hereby amended by inserting in said Act in lieu of the words "with the rank,

*Note 3.*—See act of January 30, 1885, which practically repeals this section.

pay, and allowances of a captain in the Navy, or a colonel in the Marine Corps, as the case may be," the words "with the rank and highest pay of a captain the Navy, or the rank, pay, and allowances of a colonel in the Marine Corps, as the case may be:"

June 8, 1880, ch. 129 (1 Supp. R. S., 290). R. S., § 349.

*Provided*, That this amendment shall take effect from July nineteenth, eighteen hundred and ninety-two, the date on which the present incumbent entered on duty, and that the amount herein appropriated shall be payable from the appropriation "Pay of the Navy."

—to date from 1892.

Became a law June 5, 1896.

SEC. 1604. Commissions by brevet may be conferred upon commissioned officers of the Marine Corps in the same cases, upon the same conditions, and in the same manner as are or may be provided by law for officers of the Army.

Title 15, chap. 9.

Brevets.

Apr. 16, 1814, s. 3, v. 3, p. 124; Apr. 16, 1818, s. 2, v. 3, p. 427; June 30, 1834, s. 9, v. 4, p. 713; July 6, 1812, s. 4, v. 2, p. 785; Mar. 1, 1869, s. 2, v. 15, p. 281; Mar. 3, 1869, s. 7, v. 15, p. 318; July 15, 1870, s. 16, v. 16, p. 319.

The following are the sections relating to the conferring of brevets in the Army:

Title 14, chap. 1.

Brevets.

SEC. 1209. The President, by and with the advice and consent of the Senate, may, in time of war, confer commissions by brevet upon commissioned officers of the Army, for distinguished conduct and public service in presence of the enemy.

July 6, 1812, s. 4, v. 2, p. 785; Apr. 16, 1818, s. 2, v. 3, p. 427; Mar. 1, 1869, s. 2, v. 15, p. 281.

SEC. 1210. Brevet commissions shall bear date from the particular action or service for which the officers were brevetted.

Mar. 1, 1869, s. 2, v. 15, p. 281.

SEC. 1211. Officers may be assigned to duty or command according to their brevet rank by special assignment of the President; and brevet rank shall not entitle an officer to precedence or command except when so assigned.

Apr. 16, 1818, s. 1, v. 3, p. 427; Mar. 3, 1869, s. 7, v. 15, p. 318.

SEC. 1212. No officer shall be entitled, on account of having been brevetted, to wear, while on duty, any uniform other than that of his actual rank; and no officer shall be addressed in orders or official communications by any title other than that of his actual rank.

July 15, 1870, s. 16, v. 16, p. 319.

SEC. 1264. Brevets conferred on commissioned officers shall not entitle them to any increase of pay.

Title 16, chap. 3.

Mar. 3, 1863, v. 12, p. 758; Mar. 3, 1865, s. 9, v. 13, p. 488.

Officers of the Army shall only be assigned to duty or command according to their brevet rank when actually engaged in hostilities.

Mar. 3, 1883.

Mar. 3, 1883, s. 22 Stats. L., p. 457.

SEC. 1605. Any officer of the Marine Corps may, by and with the advice and consent of the Senate, be advanced not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism.

Title 15, chap. 9.

Advancement in number.

Jan. 24, 1865, s. 1, v. 13, p. 424; Apr. 21, 1864, s. 6, v. 13, p. 54.

SEC. 1606. Any officer who is nominated to a higher grade by the provisions of the preceding section shall be

Promotion when grade is full.

Jan. 24, 1865, s. 2, v. 13, p. 424.

promoted, notwithstanding the number of said grade may be full, but no further promotion shall take place in that grade, except for like cause, until the number is reduced to that provided by law.

Promotion for gallantry.
July 16, 1862, s. 9, v. 12, p. 584; Jan. 24, 1865, s. 2, v. 13, p. 424.

SEC. 1607. Any officer of the Marine Corps may, by and with the advice and consent of the Senate, be advanced one grade, if, upon recommendation of the President by name, he receives the thanks of Congress for highly distinguished conduct in conflict with the enemy, or for extraordinary heroism in the line of his profession.

Enlistments.
July 11, 1870, res. 106, v. 16, p. 387.
See notes 4 and 5.

SEC. 1608. Enlistments into the Marine Corps shall be for a period not less than five years.

Oath.
July 11, 1798, s. 4, v. 1, p. 595.

SEC. 1609. The officers and enlisted men of the Marine Corps shall take the same oaths, respectively, which are provided by law for the officers and enlisted men of the Army.

Title 14, chap. 5.

Oath for enlisted men.
Jan. 29, 1813, s. 13, v. 2, p. 796; Aug. 3, 1861, s. 11, v. 12, p. 289.

SEC. 1342, ART. 2. "I, A B, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.

Title 15, chap. 9.

Exemption from arrest.
June 30, 1834, s. 3, v. 4, p. 713; July 11, 1798, s. 5, v. 1, p. 595.

SEC. 1610. Marines shall be exempt, while enlisted in said service, from all personal arrest for debt or contract.

Companies and detachments.
July 11, 1798, s. 1, v. 1, p. 594.

SEC. 1611. The Marine Corps may be formed into as many companies or detachments as the President may direct, with a proper distribution of the commissioned and non-commissioned officers and musicians to each company or detachment.

Title 15, chap. 9.

Service on armed vessels.
July 11, 1798, ss. 1, 3, v. 1, p. 595; July 1, 1797, s. 4, v. 1, p. 523.

SEC. 1616. Marines may be detached for service on board the armed vessels of the United States, and the President may detach and appoint, for service on said vessels, such of the officers of said corps as he may deem necessary.

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*Note 4.*—It is not in the power of the Secretary [of War] to suspend the enlistment of a soldier, retaining the right to resume his proper control over him as an enlisted man at any definite or indefinite period. He may discharge him from the service according to the contract which is made by enlistment, but the right to suspend the contract does not exist upon the part of the Secretary, even with the consent of the soldier. To use the language of Attorney-General Clifford (Op. 4, 538), "The executive department has discretionary authority to discharge before the term of service has expired, but has no power to vary the contract of enlistment." (Op., XV, 362, Devens, Sept. 4, 1877.)

*Note 5.*—Enlisted men serving within the United States can be discharged by order of the commandant on expiration of enlistment, in pursuance of the sentence of a general or summary court-martial, or by reason of unfitness for service from causes properly ascertained. Special discharges are not issued by the commandant except in cases of urgent necessity, and when, in his opinion, such discharge will not be prejudicial to the interests of the service.

The regulations for the recruiting service of the Army are applied, as far as practicable, to the recruiting service of the Marine Corps. No person is enlisted or reenlisted other than as private, drummer, fifer, or apprentice. Marines will not be enlisted or discharged on foreign stations.

SEC. 1617. No officer of the Marine Corps shall exercise command over any navy-yard or vessel of the United States.

Not to command yards or vessels.
June 30, 1834, s. 4, v. 4, p. 713.

SEC. 1618. The President may substitute marines for landsmen in the Navy, as far as he may deem it for the good of the service.

Marines as landsmen.
Mar. 3, 1849, s. 1, v. 9, p. 377.

SEC. 1619. The Marine Corps shall be liable to do duty in the forts and garrisons of the United States, on the sea-coast, or any other duty on shore, as the President, at his discretion, may direct.

Duty on shore.
July 11, 1798, s. 6, v. 1, p. 596.

SEC. 1620. The President is authorized to prescribe such military regulations for the discipline of the Marine Corps as he may deem expedient.

Regulations for discipline.
June 30, 1834, s. 8, v. 4, p. 713.

SEC. 1621. The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army.

Laws and regulations to which subject.
June 30, 1834, s. 2, v. 4, p. 713; July 11, 1798, s. 4, v. 1, p. 595.

Every military post may have one trader, to be appointed by the Secretary of War, on the recommendation of the council of administration, approved by the commanding officer, who shall be subject in all respects to the rules and regulations for the government of the Army.

July 24, 1876.

Post traders.
July 24, 1876, v. 19, p. 97.
See note 6.

That where a vacancy now exists or hereafter occurs in the position of post trader at any military post it shall not be filled, and the authority to make such appointment is hereby terminated:

Jan. 28, 1893.

27 Stat. L., 426.
Army.
Post tradership—vacancies not to be filled.

*Provided*, That in the event of the death of a post trader his personal representative shall be allowed by the Secretary of War a reasonable time in which to close the business.

Closing business of deceased traders.
See note 7.

That hereafter promotions to every grade of commissioned officers in the Marine Corps below the grade of Commandant shall be made in the same manner and under the same conditions as now are or may hereafter be prescribed, in pursuance of law, for commissioned officers of the Army:

July 28, 1892.

27 Stat. L., 321. (Supp., 1892–1895, p. 56).
Marine Corps promotions to be as in Army.
R. S., sec. 1621.
See note 8.

*Provided*, That examining boards which may be organized under the provisions of this act to determine the fitness of officers of the Marine Corps for promotion shall in all cases consist of not less than five officers, three of whom

—examining boards, how organized.
20 A. G. Op., p. 433.

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*Note 6.*—The Secretary of the Navy determines at what marine posts traders shall be allowed, and appoints them on the recommendation of the council of administration, formed under Army Regulations, approved by the commanding officers of the post and the commandant of the station.

Post traders are governed by the Army Regulations, and such orders as the commandant of the Marine Corps may issue. They can not keep, have, or sell spirituous liquors. (Order of the Secretary of the Navy, Mar. 16, 1883.)

Post traders are subject to the regulations of the Army applicable to the occupation or business carried on by them, in like manner, and to the same extent, that sutlers were. (Op., XVI, 658, Feb. 2, 1880. Phillips.)

*Note 7.*—Trading establishments at military posts are authorized by R. S., § 1113. By 1876, July 24, § 3 (1 Supp. R. S., 113), each post is to have one trader.

As to post gardens and canteens—now known as exchanges—see 1890, June 13, ch. 423, pars. 2 3 (1 Supp. R. S., 757), and 1892, July 16, ch. 195, par. 3, p. 37.

*Note 8.*—Examination. for promotion in the Army are regulated by 1890, Oct. 1, ch. 1241 (1 Supp. R. S., 811), as amended by 1892, July 27, ch. 269, p. 52.

shall, if practicable, be officers of the Marine Corps, senior to the officer to be examined, and two of whom shall be medical officers of the Navy:

Naval officers may be detailed, when.

*Provided further*, That when not practicable to detail officers of the Marine Corps as members of such examining boards, officers of the line in the Navy shall be so detailed.

Title 15, chap. 10.

Sec. 1624. Desertion by resignation. Aug. 5, 1861, s. 2, v. 12, p. 316.

SEC. 1624, ART. 10. Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.

## RETIREMENT.


Sec.
1622. Retirement, as in the Army.
1623. Composition of board.


### RETIREMENT IN THE ARMY.


Sec.
1243. Retirement upon officer's own application.
1244. After forty-five years, or at the age of sixty-two.
— Act June 30, 1882, Retirement after forty years' service. Amendments.
1245. For disability.
1247. Oaths of members.
1248. Powers and duties.
1249. Findings.
1250. Revision by the President.
1251. Finding of disability by incident of service.
1252. Disability not by an incident of service.
1253. Officers entitled to a hearing.
1254. Retired rank.
1255. Status of retired officers.
1256. Rights and liabilities.
1257. Vacancies by retirement.
1274. Pay.
1275. Wholly retired.
— Act March 3, 1875. Rank and pay.


Title 15, chap. 9.

Retirement. Aug. 3, 1861, ss. 15, 16, 17, v. 12. p. 289; July 17, 1862, s. 12, v. 12, p. 596; Jan. 21, 1870, s. 1, v. 16, p. 62; July 15, 1870, s. 4, v. 16, p. 317; June 10, 1872, s. 1, v. 17, p. 378.

SEC. 1622. The commissioned officers of the Marine Corps shall be retired in like cases, in the same manner, and with the same relative conditions, in all respects, as are provided for officers of the Army, except as is otherwise provided in the next section.

Retiring board, how composed. Aug. 3, 1861, s. 17, v. 12, p. 289. See note 1.

SEC. 1623. In case of an officer of the Marine Corps, the retiring board shall be selected by the Secretary of the Navy, under the direction of the President. Two-fifths of the board shall be selected from the Medical Corps of the Navy, and the remainder shall be selected from officers of the Marine Corps, senior in rank, so far as may be, to the officer whose disability is to be inquired of.

Title 14, chap. 2.

The following sections relate to retirement in the Army:

Retirement on own application. Aug. 3, 1861, s. 15, v. 12, p. 289; July 15, 1870, ss. 4, 5, v. 16, p. 317. See June 30, 1882, and Mar. 3, 1883.

SEC. 1243. When an officer has served forty consecutive years as a commissioned officer, he shall, if he makes application therefor to the President, be retired from active service and placed upon the retired list. When an officer has been thirty years in service, he may, upon his own aplication, in the discretion of the President, be so retired, and placed on the retired list.

*Note 1.*—Retirement in the Marine Corps is governed by secs. 1622, 1623, R. S.; i. e., officers are to be retired in like cases and in the same manner and "with the same relative conditions in all respects" as officers of the Army. Wholly retired, to receive one year's pay and emoluments; otherwise retired, 75 per cent. of the pay of the "actual rank" held by them at the time of retirement.—(Op., XV, p. 442, Devens, Jan. 31, 1878. Welles Case.)

SEC. 1244. When any officer has served forty-five years as a commissioned officer, or is sixty-two years old, he may be retired from active service at the discretion of the President.

After 45 years, or when 62. July 17, 1862, s. 12, v. 12, p. 596. See June 30, 1882, and Mar. 3, 1883.

On and after the passage of this act when an officer has served forty years either as an officer or soldier in the regular or volunteer service, or both, he shall, if he make application therefor to the President, be retired from active service and placed on the retired list, and when an officer is sixty-four years of age, he shall be retired from active service and placed on the retired list.

June 30, 1882.

Retirement after 40 years' service on own application. Retirement compulsory at 64 years of age. June 30, 1882, ch. 254, s. 1.

Nothing contained in the above "shall be so construed as to prevent, limit or restrict retirements from active service in the Army, as authorized by law in force at the date of the approval of said act," retirement under the provisions thereof "being in addition to those theretofore authorized by law."

Mar. 3, 1883.

Mar. 3, 1883, ch. 93, s. 1, 22 Stats. L., p. 457.

That all officers who have been appointed to any corps of the Navy after service in a different branch of the Navy, shall have all the benefits of their previous service in the same manner as if said appointments were a re-entry into the Navy.

July 26, 1894.

28 Stat. L., 123. (Supp. 1892-1895, p. 206-207.) Navy longevity pay. Mar. 3, 1883, ch. 97, par. 5 (1 Supp. R. S., 401); 151 U. S., 362; 152 U. S., 384. See note 2.

SEC. 1245. When any officer has become incapable of performing the duties of his office, he shall be either retired from active service, or wholly retired from the service, by the President, as hereinafter provided.

For disability. Aug. 3, 1861, s. 16, v. 12, p. 289.

SEC. 1247. The members of said board shall be sworn in every case to discharge their duties honestly and impartially.

Board, and powers and duties of.

SEC. 1248. A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose.

SEC. 1249. When the board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, has produced his incapacity, and whether such cause is an incident of service.

SEC. 1250. The proceedings and decision of the board shall be transmitted to the Secretary of War, and shall be laid by him before the President for his approval or disapproval and orders in the case.

SEC. 1251. When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers.

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*Note 2.*—See Titles "Line officers," "Engineer Corps," "Medical Corps," and "Pay Corps."

SEC. 1252. When the board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of service, and its decision is approved by the President, the officer shall be retired from active service, or wholly retired from the service, as the President may determine. The names of officers wholly retired from the service shall be omitted from the Army Register.

Officers entitled to a hearing. Aug. 3, 1861, s. 17, v. 12, p. 290.

SEC. 1253. Except in cases where an officer may be retried by the President upon his own application, or by reason of his having served forty-five years, or of his being sixty-two years old, no officer shall be retired from active service, nor shall an officer, in any case, be wholly retired from the service, without a full and fair hearing before an Army retiring board, if, upon due summons, he demands it.

Rank. June 10, 1872, v. 17, p. 378; Mar. 3, 1875, v. 18, p. 512. See Mar. 3, 1875.

SEC. 1254. Officers hereafter retired from active service shall be retired upon the actual rank held by them at the date of retirement.

Status. Aug. 3, 1861, s. 16, v. 12, p. 289; July 17, 1862, s. 12, v. 12, p. 596.

SEC. 1255. Officers retired from active service shall be withdrawn from command and from the line of promotion.

Rights and liabilities. Aug. 3, 1861, s. 18, v. 12, p. 290.

SEC. 1256. Officers retired from active service shall be entitled to wear the uniform of the rank on which they may be retired. They shall continue to be borne on the Army Register, and shall be subject to the rules and articles of war, and to trial by general court-martial for any breach thereof.

Vacancies. Ibid., s. 16.

SEC. 1257. When any officer in the line of promotion is retired from active service, the next officer in rank shall be promoted to his place, according to the established rules of the service; and the same rule of promotion shall be applied, successively, to the vacancies consequent upon such retirement.

Title 14, Chap. 3.

Pay. July 15, 1870, s. 24, v. 16, p. 320; Mar. 3, 1875, v. 18, p. 512. See Mar. 3, 1875. See note 3.

SEC. 1274. Officers retired from active service shall receive seventy-five per centum of the pay of the rank upon which they are retired.

Wholly retired. Aug. 3, 1861, s. 17, v. 12, p. 290.

SEC. 1275. Officers wholly retired from the service shall be entitled to receive, upon their retirement, one year's pay and allowances of the highest rank held by them, whether by staff or regimental commission, at the time of their retirement.

Mar. 3, 1875.

Rank and pay under certain conditions.

That all officers of the Army who have been heretofore retired by reason of disability arising from wounds received in action shall be considered as retired upon the actual rank held by them, whether in the regular or volunteer service, at the time when such wound was received, and shall be borne on the retired list and receive pay hereafter

*Note 3.*—An officer of the Army who is "retired from active service" is still in the military service of the United States, and, in addition to the percentage of pay of the rank on which he was retired, is entitled to the 10 per cent allowed by R. S. 1262, 1263 for each term of five years' service. (Otto, 105, 244, Tyler *v.* U. S.; C. C., XVI, 223.)

accordingly; and this section shall be taken and construed to include those now borne on the retired list placed upon it on account of wounds received in action: *Provided*, That no part of the foregoing act shall apply to those officers who had been in service as commissioned officers twenty-five years at the date of their retirement; nor to those retired officers who had lost an arm or leg, or has an arm or leg permanently disabled by reason of resection, on account of wounds, or both eyes by reason of wounds received in battle; and every such officer now borne on the retired list shall be continued thereon notwithstanding the provisions of section two [one], chapter thirty-eight, act of March thirty, eighteen hundred and sixty-eight [§ 1223]: *And be it also provided*, That no retired officer shall be affected by this act, who has been retired or may hereafter be retired on the rank held by him at the time of his retirement; and that all acts or parts of acts inconsistent herewith be, and are hereby, repealed.

See Op., XV, 83, 199, and 407. Mar. 3, 1895, s. 2, v. 18, p. 512. See note 4.

## PAY, RATIONS, AND MILEAGE OF THE MARINE CORPS.

Sec.
1612. Pay of officers and enlisted men.
1613. Pay of the band.
1615. Rations.
—— Pay table.

SEC. 1612. The officers of the Marine Corps shall be entitled to receive the same pay and allowances, and the

Title 15, chap. 9.

Pay of Marine Corps.

*Note 4.*—Under section 1253 an officer is entitled to appear before the board (with counsel, if desired), and to introduce testimony of his own, and cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination and have stated or reported to the board the result of the same. If the officer does not elect to appear before the board when summoned, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence. (Winthrop's Digest, p. 432.)

A retired officer in the Army may draw his pay as such, and may also draw the salary of a civil office which he may hold under the Government (not diplomatic or consular), assuming always that the duties of the civil office are performed under and by virtue of a commission appointing him to that office which he holds in addition to his rank as a retired officer. (Op., XV, p. 306, June 11, 1877, Devens. See Op., XV, p. 407, Dec. 11, 1877, on the subject of retired officers accepting positions in the diplomatic or consular service.)

the service only by a new appointment. He can not be reappointed to the retired

An officer, on being wholly retired, becomes a civilian, and can be readmitted to list, but must first be appointed on the active list to a certain rank. None but a commissioned officer on the active list of the Army can be placed on the retired list. A civilian can not. (Winthrop's Digest, p. 433; Op., XIV, 506.)

The finding of a retiring board under sec. 1521 is in the nature of a recommendation, and until it is "approved by the President" no retirement can be ordered thereupon. (Winthrop, 431.) It does not affect the authority to retire, that the incapacity of the officer may have resulted from a wound received by him while in the *volunteer* service before entering the Regular Army. (*Idem.*)

Under section 1252 an officer may, in the discretion of the President, legally be retired by reason of incapacity resulting from habitual drunkenness. (Winthrop's Digest, p. 432.)

Under section 1275 an officer wholly retired is entitled to receive a sum equal to the total of one year's pay and all the pecuniary allowances of an officer of his rank. The fact of being under a sentence of suspension from rank and pay does not affect his right to receive such full sum upon the retirement. (Winthrop's Digest, 432.)

*Held*, that a retired officer of the Army, though not *actively* employed, was an "officer in the employment of the Government," in the sense of this statute. Sec. 1782, receiving compensation for services in matters in which the Government is interested. (Winthrop's Digest, p. 434.)

*Held*, that retired officers of the Army, though relieved in general from active military service, were nevertheless, as a part of the Army, properly exempt from the public obligations peculiar to civilians, and were, therefore, no more liable than officers on the active list to be required to serve on juries. The question, however, of exemption is one for the determination of the courts. *Advised*, in such a case, that the officer appear before the court, in compliance with the summons, and there urge to the judge the objection arising from his military status to his serving on a civil jury. (Winthrop's Digest, 433.)

June 30, 1834, s. 5, v. 4, p. 713; Aug. 5, 1854, s. 1, v. 10, p. 586. See tables, *post*, and note 1.

enlisted men shall be entitled to receive the same pay and bounty for re-enlisting, as are or may be provided by or in pursuance of law for the officers and enlisted men of like grades in the infantry of the Army.

Supp. R. S., vol. 2, p. 517. Benefit of previous service to officers reappointed. 1894, July 26, ch. 165, par. 1, *ante*, p. 206.

That all officers who have been or may be appointed to any corps of the Navy or to the Marine Corps after service in a different corps of the Navy or of the Marine Corps shall have all the benefits of their previous service in the same manner as if said appointments were a reentry into the Navy or into the Marine Corps.

July 26, 1894.

* * * That the pay of the drum major shall be the same as that now established, or that may be hereafter established, for first sergeants in the Marine Corps of the same length of service.

Marine Corps. Pay of drum-major. R. S., sec. 1612.

Marine band. Aug. 5, 1854, s. 1, v. 10, p. 586; Aug. 18, 1856, s. 5, v. 11, p. 118.

SEC. 1613. The marines who compose the corps of musicians known as the "Marine band" shall be entitled to receive at the rate of four dollars a month, each, in addition to their pay as non-commissioned officers, musicians, or privates of the Marine Corps, so long as they shall perform, by order of the Secretary of the Navy, or other superior officer, on the Capitol grounds or the President's grounds.

Rations of enlisted men. July 1, 1797, s. 6, v. 1, p. 524; July 11, 1798, s. v. 1, 2, p. 595.

SEC. 1615. The non-commissioned officers, privates, and musicians of the Marine Corps shall, each, be entitled to receive one Navy ration daily.

Supp. R. S., vol. 2, p. 517. Mileage to Marine Corps officers without troops. R. S., § 1566. June 30, 1876, ch. 159, par. 1 (1 Supp. R. S., 109).

And hereafter officers of the Marine Corps traveling under orders without troops shall be allowed the same mileage as is now allowed officers of the Navy traveling without troops. * *

Enlisted marines' rations. See note 2.

* * and no law shall be construed to entitle enlisted marines on shore duty to any rations or commutation therefor other than such as now are or may hereafter be allowed to enlisted men in the Army. * *

Enlisted marines—rations. Supp. R. S., vol. 2, p. 599. R. S., s. 1615. 1882, July 16, ch. 195, par. 2, p. 37. See note 3.

No law shall be construed to entitle enlisted marines on shore duty to any rations or commutation therefor other than such as now are or may hereafter be allowed to enlisted men in the Army.

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Rations to marine officers. C. C., v. 18, p. 625. Reid's Case.

*Note 1.*—An officer in the Marine Corps, attached to a sea-going vessel, is not entitled to the ration allowed by R. S., sec. 1578, to a naval officer so attached; he is, by R. S., sec. 1612, subjected to the provisions of R. S., sec. 1269. The various statutes prior to the Revised Statutes regulating allowances of rations to officers of the Army, Navy, and Marine Corps are considered and examined in this opinion.

*Note 2.*—The same provision occurs in previous appropriation acts. See 1893, March 3, ch. 212, and 1894, July 26, ch. 165.

*Note 3.*—See 1893, March 3, ch. 212, par. 7, p. 131, for previous acts containing this provision. March 3, 1893, rations to enlisted men in the Army are fixed by R. S., sec. 1293, and 1892, July 16, ch. 195, par. 2, p. 37.

*Pay table of officers as per sections following.*

| Grades. | Pay per annum. | |
|---|---|---|
| Colonel commandant | $3,500 | See note 1. |
| Colonel | 3,500 | |
| Lieutenant-colonel | 3,000 | |
| Major (staff and line) | 2,500 | |
| Captain and assistant quartermaster | 2,000 | |
| Captain | 1,800 | |
| First lieutenant | 1,500 | |
| Second lieutenant | 1,400 | |

## *Statutes relating to the Army which apply to the Marine Corps.*

### PAY OF OFFICERS.

Sec.
1261. Rates of pay.
1262. Service of pay.
1263. Not to exceed forty per centum on yearly pay.
—— Longevity pay and retirement.
1264. Brevets.
1265. Pay during absence.
1267. Maximum of colonel's and lieutenant-colonel's pay.
1268. To be paid monthly.
1269. Allowances.
—— Pay table.

SEC. 1261. The officers of the Army shall be entitled to the pay herein stated after their respective designations: Title 14, chap. 3.

* * * * * * *

Colonel, three thousand five hundred dollars a year.
Lieutenant-colonel, three thousand dollars a year.
Major, two thousand five hundred dollars a year.

Rates of pay. See sec. 1267. Mar. 2, 1867, s. 7, v. 14, p. 423; June 15, 1870, s. 24, v. 16, p. 320; July 24, 1876, v. 19, p. 97. See sec. 1267. See note 2.

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Captain, mounted, two thousand dollars a year.
Captain, not mounted, eighteen hundred dollars a year.
First lieutenant, mounted, sixteen hundred dollars a year.
First lieutenant, not mounted, fifteen hundred dollars a year.
Second lieutenant, mounted, fifteen hundred dollars a year.
Second lieutenant, not mounted, fourteen hundred dollars a year.

SEC. 1262. There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service.

Service pay. July 15, 1870, s. 24, v. 16, p. 320. See note 3. See June 18, 1878, and June 30, 1882.

SEC. 1263. The total amount of such increase for length of service shall in no case exceed forty per centum on the yearly pay of the grade as provided by law.

Idem. See June 18, 1878, and June 30, 1882.

*Note 1.*—All officers below the rank of brigadier-general are entitled to ten per centum in addition to their current yearly pay as given above, for each and every period of five years' service: *Provided*, The total amount of such increase shall not exceed forty per centum of their current yearly pay: *And provided further*, That the pay of a colonel shall not exceed $4,500 per annum, and that of a lieutenant-colonel $4,000 per annum. [Sec. 1267, R. S.] Officers on the retired list are entitled to seventy-five per centum of pay (salary and increase) of their rank, but no increase accrues for time subsequent to date of retirement. [Sec. 1254, "Retirement."]

*Note 2.*—Officers are not "mounted," so as to entitle them to the "pay, emoluments, and allowances of cavalry officers of the same grade," when they are furnished by the Government with horses and equipments. (C. C., XVII, 132.)

*Note 3.*—An officer's longevity pay is to be computed, not from the time of his entering West Point, but from the time when he was commissioned second lieutenant. (C. C., XVI, 262. Babbitt's Case.)

June 18, 1878.

Longevity pay, and retirement.
June 18, 1878, s. 7, v. 20, p. 145.

On and after the passage of this act, all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement.

June 30, 1882.

Computing of longevity pay.
June 30, 1882, chap. 254, s. 1, 22 Stat. L., p. 118.
Sec. 1274, retirement.

The actual time of service in the Army or Navy, or both, shall be allowed all officers in computing their pay: *Provided*, That from and after the first day of July, eighteen hundred and eighty-two, the ten per centum increase for length of service allowed to certain officers by section twelve hundred and sixty-two of the Revised Statutes shall be computed on the yearly pay of the grade fixed by sections twelve hundred and sixty-one and twelve hundred and seventy-four of the Revised Statutes.

Title 14, chap. 3.

Brevets.
Mar. 3, 1863, v. 12, p. 758; Mar. 3, 1865, s. 9, v. 13, p. 488.

SEC. 1264. Brevets conferred upon commissioned officers shall not entitle them to any increase of pay.

Pay during absence.
Aug. 3, 1861, s. 20, v. 12, p. 290; Mar. 3, 1863, s. 31, v. 12, p. 736; June 20, 1864, s. 11, v. 13, p. 145; July 15, 1870, s. 24, v. 16, p. 320; May 8, 1874, v. 18, p. 43; July 29, 1876, v. 19, p. 102.
See July, 29, 1876.

SEC. 1265. Officers when absent on account of sickness or wounds, or lawfully absent from duty and waiting orders, shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half-pay during such absence exceeding thirty days in one year. When absent without leave, they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.

July 29, 1876.

Pay when absent.
May 8, 1874, v. 18, p. 43; July 29, 1876, v. 19, p. 202.
See note 3.

All officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowance: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken only once in four years.

Title 14, chap. 3.

Maximum of colonel's and lieutenant-colonel's pay.
July 15, 1870, s. 24, v. 16, p. 320. See note 4.

SEC. 1267. In no case shall the pay of a colonel exceed four thousand five hundred dollars a year, or the pay of a lieutenant-colonel exceed four thousand dollars a year.

*Note 3.*—This act, taken in connection with section 24 of the act of July 15, 1870, continued to Army officers on leave of absence (during the period for which such leave may be granted them thereunder "without deduction of pay or allowances") *quarters in kind*, but it did not authorize an allowance of commutation therefor. [See next note.] (Op., XVI, p. 619, Jan. 16, 1879. Phillips.)

Where an officer, to whom leave of absence "without deduction of pay or allowances" has been granted, is at the time he takes his leave entitled to the allowance of commutation for quarters, this allowance must be deemed to be continued to him, by force of that provision, whilst he is on leave of absence, though for a period not exceeding that for which the leave was granted thereunder. (Op., XVI, p. 577; Nov. 15, 1880. Devens.)

Where a military officer is ordered to the headquarters of a department to await further orders, and pursuant to the order remains there for a long period performing no duty, he is nevertheless entitled to quarters or commutation of quarters. (C. C., XIV, p. 148. Lippitt *v.* U. S.)

*Note 4.*—A lieutenant-colonel retired is entitled to three-fourths of what he was entitled to receive when retired, and not three-fourths of allowances which he was debarred from receiving under this section. (C. C., X, p. 283. Robert's Case.)

SEC. 1268. The sums hereinbefore allowed shall be paid in monthly payments by the paymaster.

To be paid monthly.
Ibid.

SEC. 1269. No allowances shall be made to officers in addition to their pay except as hereinafter provided.

Allowances.
Ibid.
See mileage, quarters, etc.

*Pay table of non-commissioned officers, etc., as per sections following.*

| Grades. | First period of 5 years' service. | Second period of 5 years. | Third period of 5 years. | Fourth period of 5 years. | Fifth period of 5 years. |
|---|---|---|---|---|---|
| | *Per mo.* | *Per mo.* | *Per mo.* | *Per mo.* | *Per mo.* |
| Sergeant-major | $23 | $27 | $28 | $29 | $30 |
| Quartermaster-sergeant | 23 | 27 | 28 | 29 | 30 |
| Drum-major | 22 | 26 | 27 | 28 | 29 |
| First sergeant | 22 | 26 | 27 | 28 | 29 |
| Sergeant | 17 | 21 | 22 | 23 | 24 |
| Corporal | 15 | 19 | 20 | 21 | 22 |
| Drummers and fifers | 13 | 17 | 18 | 19 | 20 |
| Privates | 13 | 17 | 18 | 19 | 20 |
| Leader of the band | 29 | 31 | 32 | 33 | 34 |
| Musician, first class | 38 | 40 | 41 | 42 | 43 |
| Musician, second class | 24 | 26 | 27 | 28 | 29 |
| Musician, third class | 21 | 23 | 24 | 25 | 26 |

See note 1.

## MILEAGE, PAY, ETC.

Sec.
1273. Mileage.
1280. Pay of enlisted men.
1281. Additional pay.
1282. Reenlistment pay.
1283. Service pay of men already in service.
1284. Reenlistment.
1285. Certificate of merit.
1286. Noncommissioned officers of Mexican war.
1287. Extra duty.
1288. During captivity.
1289. Travel pay to officers.
1290. Travel pay to soldiers.
1291. Soldiers' pay not assignable.

SEC. 1273. When any officer travels under orders, and is not furnished transportation by the Quartermaster's Department, or on a conveyance belonging to or chartered by the United States, or on any railroad on which troops and supplies are entitled to be transported free of charge, he shall be allowed eight cents a mile, and no more, for each mile actually traveled under such order, distances to be calculated by the shortest usually traveled route; and no payment shall be made to any officer except by a paymaster of the Army.

Title 14, chap. 3.

Mileage.
July 15, 1870, s. 24, v. 16, p. 320; June 16, 1874, v. 18, p. 72; Mar. 3, 1875, v. 18, p. 452; July 24, 1876, v. 19, p. 100.
See Mar. 1883.

*Note 1.*—All enlisted men, except musicians of the band, serving on a first period of five years' service, are entitled to one dollar per month for the third year, two dollars per month for the fourth year, and three dollars per month for the fifth year's service, in addition to the sums given in the first column above, which additional amounts are retained until expiration of service and paid only upon final settlement and *honorable* discharge.

One dollar per month is retained from all enlisted men (except the Marine Band) serving under a re-enlistment. This retained pay is not included in the above table, and is to be credited and paid only upon final settlement and *honorable* discharge from service.

Mar. 3, 1883.

Computation of mileage, etc.
Mar. 3, 1883, 22 Stat. L., p. 456.
See note 1.

From and after the passage of this act mileage of officers of the Army shall be computed over the shortest usually traveled routes between the points named in the order, and the necessity for such travel in the military service shall be certified to by the officer issuing the order and stated in said order.

Pay of enlisted men.
May 15, 1872, s. 1, v. 17, p. 116; Feb. 27, 1877, chap. 69, v. 19, p. 243.

SEC. 1280. The monthly pay of the following enlisted men of the Army shall, during their first term of enlistment, be as follows, with the contingent additions thereto, hereinafter provided:

Sergeant-majors of * * * infantry, twenty-three dollars.

Quartermaster-sergeants, * * * infantry, twenty-three dollars.

Principal musicians of * * * infantry, twenty-two dollars.

Sergeants of * * * infantry, seventeen dollars.

Corporals of * * * infantry, fifteen dollars.

Musicians, drummers and fifers, * * * infantry, thirteen dollars.

Privates of * * * infantry, thirteen dollars.

Additional pay.
May 15, 1872, s. 2, v. 17, p. 116.

SEC. 1281. To the rates of pay stated in the preceding section one dollar per month shall be added for the third year of enlistment, one dollar more per month for the fourth year, and one dollar more per month for the fifth year, making in all three dollars' increase per month for the last year of the first enlistment of each enlisted man named in said section. But this increase shall be considered as retained pay, and shall not be paid to the soldier until his discharge from the service, and shall be forfeited unless he serves honestly and faithfully to the date of discharge.

Reenlistment pay.
Aug. 4, 1854, s. 2, v. 10, p. 575; May 15, 1872, s. 3, v. 17, p. 116; Mar. 3, 1875, s. 10, v. 18, p. 419.

SEC. 1282. All enlisted men mentioned in section twelve hundred and eighty, who, having been honorably discharged, have re-enlisted or shall re enlist within one month thereafter, shall, after five years' service, including their first enlistment, be paid at the rate allowed in said section to those serving in the fifth year of their first enlistment: *Provided*, That one dollar per month shall be retained from the pay of the re-enlisted men, of whatever grade, named in section twelve hundred and eighty-one during the whole period of their re-enlistment, to be paid to the soldier on his discharge, but to be forfeited unless he shall have served honestly and faithfully to the date of discharge.

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*Note 1.*—If an officer on leave of absence be ordered to temporary duty at a place where he happens to be, so that the order involves no traveling to the place of temporary duty, and he be kept there until after his leave of absence expires and then ordered to his proper station, he is not entitled to mileage under General Orders 97 of 1876. (C. C., XIV, 272, Barr *v.* U. S.)

Where an officer has received but not yet accepted leave of absence from the War Department, is ordered by his commanding officer to convey prisoners to another post, his leave of absence is to that extent suspended, and he is entitled to mileage from his post to the place of performance and back. (C. C., XV, 264, Andrew *v.* U. S.)

An officer's "station" means his permanent station, the place of performance of his military duties, and not a place to which he was temporarily ordered for a special duty and at which he accepted his leave of absence. An officer's station can not be changed by his being ordered to perform a temporary duty while on leave of absence. (*Idem.*)

SEC. 1283. Enlisted men, now in the service, shall receive the rates of pay established in this chapter according to the length of their service.

Service pay of men already in service.
See act of June 18, 1878, p. 115.
May 15, 1872, s. 4, v. 17, p. 117.
See note 2.

SEC. 1284. Every soldier who, having been honorably discharged, re-enlists within one month thereafter, shall be further entitled, after five years' service, including his first enlistment, to receive, for the period of five years next thereafter, two dollars per month in addition to the ordinary pay of his grade; and for each successive period of five years of service, so long as he shall remain continuously in the Army, a further sum of one dollar per month. The past continuous service, of soldiers now in the Army, shall be taken into account, and shall entitle such soldier to additional pay according to this rule; but services rendered prior to August fourth, eighteen hundred and fifty-four, shall in no case be accounted as more than one enlistment.

Reenlistment.
Aug. 4, 1854, s. 2, v. 10, p. 575; May 15, 1872, s. 4, v. 17, p. 117.

SEC. 1285. A certificate of merit granted to a private soldier by the President for distinguished services shall entitle him to additional pay, at the rate of two dollars per month, while he remains continuously in the service; and such certificate of merit granted to a private soldier who served in the war with Mexico shall entitle him to such additional pay, although he may not have remained continuously in the service.

Certificate of merit.
Mar. 3, 1847, s. 17, v. 9, p. 186; Aug. 4, 1854, s. 3, v. 10, p. 575.

SEC. 1286. Non-commissioned officers who served in the war with Mexico, and have been recommended by the commanding officers of their regiments for promotion by brevet to the lowest grade of commissioned officer, but have not received such recommended promotion, shall be entitled to additional pay at the rate of two dollars per month, although they may not have remained continuously in the service.

Noncommissioned officers of Mexican war.

SEC. 1287. When soldiers are detailed for employment as artificers or laborers in the construction of permanent military works, public roads, or other constant labor of not less than ten days' duration, they shall receive, in addition to their regular pay, the following compensation: Privates working as artificers, and non-commissioned officers employed as overseers of such work, not exceeding one overseer for twenty men, thirty-five cents per day, and privates employed as laborers, twenty cents per day. This allowance of extra pay shall not apply to the troops of the Ordnance Department.

Extra duty.
July 13, 1866, s. 7, v. 14, p. 93; Feb. 1, 1873, v. 17, p. 422; see Ops., II, 706; III, 116; IV, 325; and X, 472.

SEC. 1288. Every non-commissioned officer and private of the Regular Army, and every officer, non-commissioned officer, and private of any militia or volunteer corps in the

During captivity.
Mar. 30, 1814, s. 14, v. 3, p. 115.
See note 3.

*Note 2.*—The tenth section of the act of March 3, 1875 (ch. 131, v. 18, p. 402), provides that the enlisted musicians of the band shall have the benefits as to pay, arising from re-enlistments and length of service, applicable to other enlisted men of the Army.

*Note 3.*—This section does not extend to one who was not in the discharge of his duties at the time of his capture, and who contributed to the disaster culpably. (C. C., IV, p. 209. Phelps's Case.)

The sentence of a court-martial, including a forfeiture of all pay due at the time of trial, or to become due thereafter, precludes an officer from a right to receive pay after trial and during his captivity, under the act of March 30, 1814 (sec. 1288, Rev. Stat.).

service of the United States who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence, and allowance to which he may be entitled while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war of such militia corps to any pay or compensation after the date of his parole, except the traveling expenses allowed by law.

Travel pay to officers.
Jan. 11, 1812, s. 22, v. 2, p. 674; Jan. 29, 1813, s. 15, v. 2, p. 796; June 20, 1864, s. 8, v. 13, p. 145; Feb. 27, 1877, v. 19, p. 244.

SEC. 1289. When an officer is discharged from the service, except by way of punishment for an offense, he shall be allowed transportation and subsistence from the place of his discharge to the place of his residence at the time of his appointment, or to the place of his original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel-pay and commutation of subsistence, according to his rank, for such time as may be sufficient for him to travel from the place of discharge to the place of his residence, or original muster into service, computed at the rate of one day for every twenty miles.

Travel pay to soldiers.
Ibid.

SEC. 1290. When a soldier is discharged from the service, except by way of punishment for an offense, he shall be allowed transportation and subsistence from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel-pay and commutation of subsistence for such time as may be sufficient for him to travel from the place of discharge to the place of his enlistment, enrollment, or original muster into the service, computed at the rate of one day for every twenty miles.

Soldiers' pay not assignable.
May 8, 1792, s. 4, v. 1, p. 280.
See note 4.

SEC. 1291. No assignment of pay by a non-commissioned officer or private, previous to his discharge, shall be valid.

## FORAGE, FUEL, QUARTERS.

Sec.
1269. Allowances limited.
1270. Fuel, forage, etc., in kind.
—— Commutation for forage not to be paid.
1271. Forage, allowance in kind.
1272. Forage, to whom furnished.
—— Allowance of forage specified.
—— Act May 4, 1880. No discrimination east of the Mississippi.
—— Act June 18, 1878. Fuel, allowance, etc.
—— Quarters for officers.
—— Commutation for quarters.
—— Act June 23, 1879. No allowance of claims for servants' quarters.

Title 14, chap 8.
Allowances limited.
July 15, 1870, s. 24, v. 16, p. 320.

SEC. 1269. No allowances shall be made to officers in addition to their pay except as hereinafter provided.

*Note 4.—Held*, That the provision in section 1291 that "no assignment of pay by a noncommissioned officer or private previous to his discharge shall be valid" does not preclude a soldier so situated as to be unable to receive his pay in person from giving an order to another person to receive and receipt for the same *for* him, and that a soldier in the custody of the civil authorities under a criminal charge might legally be paid the amount of pay due him upon an order given by him for the same to the attorney employed to defend him; also, that the pay due an insane officer or soldier might legally be rendered to a person duly appointed as his guardian under the State laws. (Winthrop's Digest, 369.)

SEC. 1270. Fuel, quarters, and forage may be furnished in kind to officers by the Quartermaster's Department according to law and regulations. *Provided however*, That when forage in kind cannot be furnished by the proper departments, then and in all such cases, officers entitled to forage may commute the same according to existing regulations: *Provided further*, That officers of the Army and of volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively.

Fuel, quarters, and forage. July 15, 1870, s. 24, v. 16, p. 320; Feb. 27, 1877, v. 19, p. 243. See acts of June 18, 1878.

Marine Corps. * * * That no commutation for forage shall be paid.

Jan. 30, 1885.

No commutation of forage in Marine Corps. R. S., secs. 1270, 1272, 1612.

SEC. 1272. Forage shall be allowed to officers only for horses authorized by law, and actually kept by them in service when on duty and at the place where they are on duty.

Forage, to whom furnished. Apr. 24, 1816, s. 12, v. 3, p. 299; July 17, 1862, s. 1, v. 12, p. 594. See June 18, 1878.

And forage in kind may be furnished to the officers of the Army, by the Quartermaster's Department, only for horses owned and actually kept by such officers in the performance of their official military duties when on duty with troops in the field or at such military posts west of the Mississippi River [see Post] as may be from time to time designated by the Secretary of War, and not otherwise, as follows:

June 18, 1878.

Allowance of forage. June 18, 1878, s. 8, v. 20, p. 150.

To a colonel, two horses.
To a lieutenant-colonel, two horses.
To a major, two horses.
To a captain (mounted), two horses.
To a lieutenant (mounted), two horses

* * * * * * *

*Provided*, That there shall be no discrimination in the issue of forage against officers serving east of the Mississippi River, provided they are required by law to be mounted, and actually keep and own their animals.

May 4, 1880.

No discrimination east of the Mississippi. Feb. 24, 1881, v. 21, p. 346; May 4, 1880, v. 21, p. 111.

Allowance of or commutation for fuel to commissioned officers is hereby prohibited; but fuel may be furnished to the officers of the Army by the Quartermaster's Department, for the actual use of such officers only, at the rate of three dollars per cord for standard oak wood, or at an equivalent rate for other kinds of fuel, according to the regulations now in existence. * * *

June 18, 1878.

Fuel. June 18, 1878, s. 8, v. 20, p. 150. See note 1.

That at all posts and stations where there are public quarters belonging to the United States, officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such

Quarters for officers.

*Note 1.*—The provisions of section 8, act June 18, 1878, giving to Army officers the privilege of purchasing fuel at the rate of $3 per cord for standard oak wood, do not extend to retired officers. A cord of hard wood is made, under the regulations, the standard by which other grades of fuel are tested. This section authorizes the sale only of the quantity of other fuel for $3, which is made the equivalent of a cord of standard wood. (Op., XVI, 92, Devens, July 18, 1878.)

Rate of commutation.
June 18, 1878, s. 9, v. 20, p. 151; June 23, 1879, v. 21, p. 31.
See note 2.

number of rooms as is now allowed to such grade by the rules and regulations of the Army; *Provided*, That at places where there are no public quarters, commutation therefor may be paid by the Pay Department to the officer entitled to the same at a rate not exceeding *twelve* dollars per room per month. * * *

June 23, 1879.

No allowance for claims for servants' quarters.

That no allowance shall be made for claims for quarters for servants heretofore or hereafter. * * *

June 23, 1879, s. 1, v. 21, p. 30.

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*Note 2.*—A military post or station where there are public quarters for officers, but insufficient for the accommodation of all the officers, is, in regard to those officers who are necessarily excluded from the public quarters, a place where there are "no public quarters," within the meaning of the *proviso* in section 9, act of June 18, 1878, and the officers thus excluded may be allowed commutation for quarters. (Op., XVI, 611, Aug. 7, 1878.)

## DIVISION III.

## ACCOUNTS, ACCOUNTING AND DISBURSING OFFICERS, PUBLIC MONEY AND PROPERTY, NAVY DEPARTMENT AND BUREAUS, CIVIL SERVICE, ETC.

### ACCOUNTING OFFICERS AND ACCOUNTS.

(See also DISBURSING OFFICERS and AGENTS.)

Sec.
236. Public accounts to be settled in the Department of the Treasury.
237. Commencement of the fiscal year.
250. Settlement of accounts within fiscal year.
260. Reports upon appropriations for the Departments of War and the Navy.
273. Duties of the Second Comptroller.
274. Power of Second Comptroller as to arrears of pay.
277. Duties of the Fourth Auditor.
283. Manner of keeping accounts of Departments of War and the Navy.
297. Auditors may administer oaths.
3673. Warrants, drawing and countersigning.
3675. Warrants, form of drawing and how charged.

July 31, 1894.

Certified balances conclusive on Executive Departments, etc. R. S., sec. 191.

SEC. 8. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government,

—subject to revision by Comptroller.

except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government:

—or reexamination by order of Secretary of Treasury.

*Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the re-examination of any account.

Certificate of differences on revision, how certified.

Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision the Auditor who shall have audited the account shall state an account of such differences, and certify it to the Division of Bookkeeping and Warrants, * * *

Accepting payments on Auditor's settlement, conclusive.

Any person accepting payment under a settlement by an Auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted;

Suspensions permitted.

but nothing in this Act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement.

—action upon settlement.

When suspended items are finally settled a revision may be had as in the case of the original settlement.

Accounts not to be delayed for revision.

Action upon any account or business shall not be delayed awaiting applications for revision:

Issuing warrants, time to be fixed.

*Provided*, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this Act.

Auditors to preserve accounts.

The Auditors shall, under the direction of the Comptroller of the Treasury, preserve, with their vouchers and certificates, all accounts which have been finally adjusted.

What decisions of Auditors to be reported to Comptroller.

All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor.

—of Comptroller to be transmitted to Auditor.

All decisions made by the Comptroller of the Treasury under this Act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

Officers may call on Comptroller for decision.

Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them,

—when rendered, to govern.

which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

Repeal of R. S., secs. 191, 270. See note 1.

Sections one hundred and ninety-one and two hundred and seventy of the Revised Statutes are repealed.

Comptroller, Auditors, etc., not new officers.

SEC. 9. This Act, so far as it relates to the First Comptroller of the Treasury and the several Auditors and Deputy Auditors of the Treasury, shall be held and construed to operate merely as changing their designations and as adding to and modifying their duties and powers, and not as creating new officers.

Transfer of duties to Auditors.

All laws not inconsistent with this Act, relating to the Auditors of the Treasury in connection with any matter, shall be understood in each case to relate to the Auditor to whom this Act assigns the business of the Executive Department or other establishments concerned in that matter.

Division of bookkeeping and warrants established.

SEC. 10. The Division of Warrants, Estimates, and Appropriations in the office of the Secretary of the Treasury is hereby recognized and established as the Division of Bookkeeping and Warrants. It shall be under the direction of the Secretary of the Treasury as heretofore.

—to keep accounts of receipts and expenditures.

Upon the books of this division shall be kept all accounts of receipts and expenditures of public money except those relating to the postal revenues and expenditures therefrom;

Repeal of R. S., sec. 313; R. S., secs. 283, 3675. See note 2.

and section three hundred and thirteen and so much of sections two hundred and eighty-three and thirty-six hundred and seventy-five of the Revised Statutes as require those accounts to be kept by certain Auditors and the Register of the Treasury are repealed.

Duties of Register.

The duties of the Register of the Treasury shall be such as are now required of him in connection with the public

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*Note 1.*—(13) R. S., sec. 191, hereby repealed, is superseded by sec. 8, above, on the same subject. R. S., sec. 270, allowing an appeal to the Comptroller in postal accounts, is also superseded by the same section.

*Note 2.*—R. S., sec. 313, hereby repealed, prescribes the duties of the Register. The subsequent sentence appears to reenact paragraph "First" of that section.

debt and such further duties as may be prescribed by the Secretary of the Treasury.

SEC. 11. Every requisition for an advance of money, before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this Act.

Requisition for advances. R. S., secs. 366, 444, 3673. See note 3.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury,

Warrants. —to be countersigned.

and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this Act, or by the requisition for advance of money,

—to be accompanied, how.

which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes;

Appropriation, how stated. R. S., sec. 3675.

and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon.

Certificate or requisition, action.

Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required.

Requisitions, when not required.

And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury.

R. S., secs. 366, 444, 3673.

SEC. 21. All accounts stated by the Auditors before the first day of October, eighteen hundred and ninety-four, and then pending for settlement in the offices of the First or Second Comptroller, or the Commissioner of Customs, shall be revised by the Comptroller of the Treasury in the manner provided by existing law, and the balances arising thereon shall be certified to the Division of Bookkeeping and Warrants.

July 31, 1894.

Revision of accounts pending Oct. 1, 1894.

SEC. 22. It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of this Act, and for transferring or preserving books, papers, or other property appertaining to any office or branch of business affected by it.

Secretary of Treasury to make rules.

It shall also be the duty of the heads of the several Executive Departments and of the proper officers of other Government establishments, not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section twelve of this Act, before their transmission to the Auditors, and

Rules, etc., by Departments, etc. Secs. 12, 14, above.

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*Note 3.*—By Department circular, No. 145, of September 29, 1894, the Secretary of the Treasury made the following order:

*To the heads of Bureaus and Offices, Treasury Department, and Chiefs of Divisions, Secretary's Office, Treasury Department:*

Requisitions for advances; how made.

It is hereby directed that, on and after October 1 next, all requisitions for advances to disbursing officers shall be signed by the head of the proper bureau instead of by the disbursing officers themselves; and

That requisitions upon drafts drawn upon the Secretary of the Treasury by consular officers shall originate in the office of the Auditor for the State and other Departments and be signed by him, instead of by the Comptroller, as heretofore.

for the execution of other requirements of this Act in so far as the same relate to the several Departments or establishments.

Claims not reopened.

SEC. 23. Nothing in this Act shall be construed to authorize the re-examination and payment of any claim or account which has heretofore been disallowed or settled.

New accounting system in force, Oct. 1, 1894.

SEC. 24. The provisions of sections three to twenty-three inclusive of this Act shall be in force on and after the first day of October, eighteen hundred and ninety-four.

Repeal.

SEC. 25. All laws or parts of laws inconsistent with this Act are repealed.

Title 7, chap. 1.

SEC. 236. All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.

Public accounts, where to be adjusted.
Mar. 3, 1817, s. 2, v. 3, p. 366.
See note 4.

Mar. 29, 1894.

That instead of forwarding to the accounting officers of the Treasury Department returns of public property entrusted to the possession of officers or agents,

28 Stat. L., 47.
Supp. R. S., p. 174-5.
Property accounts not to be forwarded to Treasury Department.
R. S., sec. 226.
See notes 5 and 6.

the Quartermaster-General,
the Commissary-General of Subsistence,
the Surgeon-General,
the Chief of Engineers,
the Chief of Ordnance,

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*Note 4.*—Settlements made of the accounts of individuals by the accounting officers appointed by law, are final and conclusive so far as the Executive Departments are concerned. Aggrieved parties can apply to Congress. (Op., I, 624; II, 302; V, 176.)

Adjusted accounts should not, as a rule, be reopened without authority of law. (Op., II, 625, 640; III, 148, 461, 521; IV, 378; X, 231; XI, 129.)

If duly settled, adjusted, and closed by the proper officers, upon a full knowledge of all the facts, and no errors in calculation have been made, an account can not be reopened without express authority of law. (Op., XII, 386; Browning, Ap. 20, 1868; see also Op., IX, 505.)

According to the general practice of the Treasury, accounts are never closed; and in neither the legal nor mercantile sense of the term is an officer's account with the Treasury over "finally adjusted." (C. C., XIV, 114.)

The accounting officers in settling accounts and claims have a right to adopt the report of a committee in Congress as establishing the principles which are to govern them in the examination thereof. A bill is considered part of a report, and its passage a virtual adoption thereof. The report is in the light of a preamble to the law. (Op., I, 596.)

There is a difference between the construction placed upon an act by *individual* members in debate and the opinion of the committee having the matter in charge. Proper to look into the report of the committee in giving construction to ambiguous language in an act. (Op., XIV, 624, Williams, Feb. 21, 1874.)

The rejection of a claim, in whole or in part, by the accounting officers leaves the party free to pursue his remedy at law, viz, an action in the Court of Claims, although he may have accepted the portion allowed. (C. C., XVII, 288.)

A pure matter of account belongs to the Department; does not belong to the Court of Claims until it is within the range of judicial cognizance. Accounting bureaus were organized to settle accounts; the Court of Claims was established to adjudicate claims. Unless a case becomes such as to "involve disputed facts or controverted questions of law," it is an account; when it does it is a claim. (C. C., V, 5, p. 293).

Regulations as to property accounts in War Department.

*Note 5.*—See R. S., sec. 225, as to oath of commanding officer in settlement of military property accounts, and R. S., sec. 284, as to settlement of pursers' accounts for property lost on public vessel.

*Note 6.*—On October 6, 1894, the Auditor for the War Department officially stated that no regulations under this act "have been made which affect this office." By General Orders, No. 22, Headquarters of the Army, July 6, 1894, the following regulations are promulgated under this act:

By direction of the Secretary of War, and in conformity with the above act (quoted in the order), the following is published for the information and guidance of all concerned:

I. All returns of stores or supplies will be rendered as required by regulations or orders, and will be forwarded within twenty days after the expiration of the accounting periods to the chief of the bureau to which the property pertains. Abstracts of purchases will be forwarded with the money accounts.

II. As soon as possible after the receipt of the return by the proper chief of bureau it will be examined in his office, and the officer making the return will be notified of all errors and irregularities found therein and granted three months to correct them. Suspensions or disallowances will not be made on account of slight informalities

the Chief Signal Officer,
the Paymaster-General of the Navy,
the Commissioner of Indian Affairs,
or other like chief officers in any Department,

by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the proper accounting officer of the Treasury Department, for debiting on the proper account, any charge against any officers or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him.

Losses to be certified to Treasury.

SEC. 2. That said certificate shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility;

Contents of certificate.

the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the accounting officers of the Treasury Department in accounting.

—effect.

SEC. 3. That the manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by this Act, except as provided in section one;

Existing rules, how affected.

but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability.

Opportunity for relief.

SEC. 4. That the heads of the several Departments are hereby empowered to make and enforce regulations to carry out the provisions of this Act.

Regulations to enforce act.

SEC. 5. That all laws or parts of laws inconsistent with the provisions of this Act are hereby repealed.

Repeal.

July 28, 1892.

27 Stat. L., 282, (Supp., 1892–1895, p. 55).

SEC. 2. That hereafter the accounting officers of the Treasury shall not receive, examine, consider, or allow any claim against the United States for sea pay or commutation of rations which has been or may be presented by officers of the Navy, their heirs or legal representatives, under the decisions of the Supreme Court, which have heretofore been adopted as a basis for the allowance of such claims, which accrued prior to July sixteenth, eighteen hundred and eighty.

Navy. Claims for sea pay or commutation of rations accrued before July 16, 1880, not to be allowed.

120 U. S., 46, 51, 52; 125 U. S., 556.

SEC. 237. The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures,

Commencement of the fiscal year.

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which do not affect the validity of the voucher, but the officer's attention may be called to them. Whenever the errors have been corrected, or compensation has been made for deficient articles, and the action of the bureau chief is sustained or modified by the Secretary of War, the return will be regarded as settled and the officer who rendered the return will be notified accordingly.

III. If the necessary corrections in the return be not made within the prescribed time the facts will be reported to the Secretary of War. When it has been determined that the money value of the property for which an officer has failed to account shall be refunded to the United States, the facts will be certified to the proper accounting officer of the Treasury by the chief of bureau.

The provisions of the above act and regulations are applicable to all property returns rendered for any period of accountability subsequent to March 31, 1894.

Paragraphs 1327, 1328, 1329, 1330, 1332, and section 7, paragraph 1431, Army Regulations 1889, are hereby revoked.

Aug. 26, 1842, ss. 1, 2, v. 5, p. 536; May 8, 1872, s. 1, v. 17, p. 61; Mar. 3, 1873, s. 1, v. 17, p. 486. See note 7.

estimates, and appropriations, * * * shall commence on the first day of July in each year; and all accounts of receipts and expenditures required by law to be published annually shall be prepared and published for the fiscal year as thus established.

Reports upon appropriations for Departments of War and Navy. Mar. 3, 1817, s. 6, v. 3, p. 367.

SEC. 260. The Secretary of the Treasury shall lay before Congress at the commencement of each regular session, accompanying his annual statement of the public expenditure, the reports which may be made to him by the Auditors charged with the examination of the accounts of the Department of War and the Department of the Navy, respectively, showing the application of the money appropriated for those Departments for the preceding year.

Title 7, chap. 8.

Duties of the Second Comptroller. Mar 3, 1817, s. 9, v. 3, p. 367; May 7, 1822, s. 3, v. 3, p. 689. See sec. 3673, July 31, 1894.

SEC. 273. It shall be the duty of the Comptroller of the Treasury:

First. To examine all accounts settled by the Second, Third, and Fourth Auditors, and certify the balances arising thereon to the Secretary of the Department in which the expenditure has been incurred.

Second. To countersign all warrants drawn by the Secretaries of War and of the Navy, which shall be warranted by law.

Third. To report to the Secretaries of War and of the Navy the official forms to be issued in the different offices for disbursing the public money in those Departments, and the manner and form of keeping and stating the accounts of the persons employed therein.

Fourth. To superintend the preservation of the public accounts subject to his revision.

Power of Second Comptroller as to arrears of pay. July 4, 1864, s. 3, v. 13, p. 390.

SEC. 274. The Second Comptroller may prescribe rules to govern the payment of arrears of pay due to any petty officer, seaman, or other person not an officer, on board any vessel in the employ of the United States, which has been sunk or destroyed, in case of the death of such petty officer, seaman, or person, to the person designated by law to receive the same.

Title 7, chap. 4.

SEC. 277. The duties of the Auditors shall be:

* * * * * * *

Duties of the Auditors. Mar. 3, 1817, s. 4, v. 3, p. 366; July 20, 1868, s. 1, v. 15, p. 106; July 28, 1866, s. 8, v. 14, p. 327; June 8, 1872, s. 22, v. 17, p. 28; Mar. 3, 1849, s. 3, v. 9, p. 395, 415; June 30, 1864, s. 2, v. 13, p. 223. See note 8.

Fifth. The Fourth Auditor shall receive and examine all accounts accruing in the Navy Department or relative thereto, and all accounts relating to Navy pensions; and, after examination of such accounts, he shall certify the balances, and shall transmit such accounts, with the vouchers and certificate, to the Second Comptroller for his decision thereon.

*Note 7.*—Fractions of a day are not noticed for legal purposes. If the law authorizes a certain thing to be done within a certain number of days, the *first* day is excluded from the calculation. Divisions of a day excluded in public proceedings. (Op., IX, 132, Black, Mar. 10, 1858.) Whole quarter of a year means a whole fiscal quarter in accordance with the division of a year used in the Treasury Department from its organization. (Op., III, p. 156, Butler, Oct. 27, 1836.) Two years from and after the 4th of March, 1836, includes the 4th of March, 1838. (Op., III, p. 157, Butler, Nov. 3, 1836.) "From and after," "On and after," are equivalents of each other. (Op., XIV, p. 542, Williams, Mar. 10, 1875.)

*Note 8.*—"Settled," equivalent in meaning to "finally acted on." A certificate to the Department must be accompanied by the Auditor's action; need not be incorporated in the certificate. (Op., XV, 139, Taft, Aug. 2, 1876; see also 192.)

The President can not interpose in the settlement of accounts by the accounting

SEC. 3. The Auditors of the Treasury shall hereafter be designated as follows:

July 31, 1894.

Auditors' designations changed.

the Fourth Auditor as Auditor for the Navy Department;

—for Navy Department.

The designations of the deputy auditors and other subordinates shall correspond with those of the Auditors.

Deputies.

And each deputy auditor, in addition to the duties now required to be performed by him, shall sign, in the name of the Auditor, such letters and papers as the Auditor may direct.

Duties.

SEC. 7. Accounts shall be examined by the Auditors as follows:

The Auditor of the Navy Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Navy, and of all bureaus and offices under his direction, all accounts relating to the Naval Establishment, Marine Corps, Naval Academy, and to all other business within the jurisdiction of the Department of the Navy, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of the Navy.

Auditor of the Navy Department.

SEC. 283. The Auditors charged with the examination of the accounts of the Departments of War and of the Navy, shall keep all accounts of the receipts and expenditures of the public money in regard to those Departments, and of all debts due to the United States on moneys advanced relative to those Departments; shall receive from the Second Comptroller the accounts which shall have been finally adjusted, and shall preserve such accounts, with their vouchers and certificates, and record all requisitions drawn by the Secretaries of those Departments, the examination of the accounts of which has been assigned to them. They shall annually, on the first Monday in November, severally report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and they shall make such reports on the business assigned to them as the Secretaries of those Departments may deem necessary and require.

Manner of keeping accounts of Departments of War and the Navy.

Mar. 3, 1817, ss. 5, 6, v. 3, p. 367.

[Examination of accounts under exhausted appropriations. See Appropriations.]

[Adjustment of liabilities with "General account of advances." See Appropriations.]

SEC. 297. The several Auditors are empowered to administer oaths to witnesses in any case in which they may deem it necessary for the due examination of the accounts with which they shall be charged.

Auditors may administer oaths.

Mar. 3, 1817, s. 12, v. 3, p. 368; June 8, 1872, s. 24, v. 17, p. 288.

Title 41.

SEC. 3673. All moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury, by warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of those Departments, respectively, countersigned by the Second Comptroller of the Treasury, and registered by the proper Auditor.

Drafts for War and Navy Departments.

May 7, 1822, s. 3, v. 3, p. 689; Mar. 3, 1817, ss. 5, 9, v. 3, p. 367.

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officers and direct credits to be allowed; can not interfere legally with the duties belonging to the accounting officers; an appeal does not lie to him from the determination of the accounting officers acting in the sphere of their duties; he can not interfere in their decisions; he does not possess the power to examine into the correctness of their settlements for the purpose of correcting any errors they may have committed. (Op., I, 624, 636, 678, 706, Wirt; II, 507, 544, Taney.)

[March 4, 1874, v. 18, p. 19, modifies as to War Department.]

Form of drawing and charging warrants.
Mar. 3, 1809, s. 1, v. 2, p. 535; Sept. 2, 1789, s. 6, v. 1, p. 67.

SEC. 3675. All warrants drawn by the Secretary of the Treasury, upon the Treasurer of the United States, shall specify the particular appropriation to which the same should be charged; and the moneys paid by virtue of such warrants shall, in conformity therewith, be charged to such appropriation in the books of the Secretary, First Comptroller, and Register.

## ACCOUNTS OF LOST VESSELS AND CLOTHING.

Sec.
274. Payments to representatives of person lost.
284. Settlement of accounts of paymaster of lost or captured public vessels.
286. Fixing date of loss of missing vessels.
287. Accounts of petty officers, seamen, etc., on lost vessel.
288. Compensation for personal effects lost.
289. Payment of accounts of deceased petty officers, seamen, etc., of lost vessel.
290. Allowance for effects of officer of lost vessel.

Title 7, chap. 8.

Arrears of pay to deceased persons.
July 4, 1864, s. 3, v. 13, p. 390.

SEC. 274. The Second Comptroller may prescribe rules to govern the payment of arrears of pay due to any petty officer, seaman, or other person not an officer, on board any vessel in the employ of the United States, which has been sunk or destroyed, in case of the death of such petty officer, seaman, or person, to the person designated by law to receive the same.

Title 7, chap. 4.

Settlement of accounts of paymaster of lost or captured public vessels.
Mar. 3, 1847, s. 6, v. 9, p. 173; June 22, 1860, s. 3, v. 12, p. 83.

SEC. 284. In every case of the loss or capture of a vessel belonging to the Navy of the United States, the proper accounting officers of the Treasury, under the direction of the Secretary of the Navy, are authorized, in the settlement of the accounts of the paymaster of such vessel, to credit him with such portion of the amount of the provisions, clothing, small stores, and money, with which he stands charged on the books of the Fourth Auditor of the Treasury, as they shall be satisfied was inevitably lost by such capture or loss of a public vessel; and such paymaster shall be fully exonerated by such credit from all liability on account of the provisions, clothing, small stores, and money so proved to have been captured or lost.

Fixing date of loss of missing vessels.
July 4, 1864, s. 1, v. 13, p. 389.

SEC. 286. The proper accounting officers of the Treasury are authorized, under the direction of the Secretary of the Navy, in settling the accounts of seamen, and others, not officers, borne on the books of any vessel in the Navy which shall have been wrecked, or which shall have been unheard from so long that her wreck may be presumed, or which shall have been destroyed or lost with the rolls and papers necessary to a regular and exact settlement of such accounts, to fix a day when such wreck, destruction, or loss shall be deemed to have occurred.

Accounts of petty officers, seamen, etc., on lost vessel.
Idem, s. 2.
See sec. 274.

SEC. 287. The proper accounting officers of the Treasury are authorized, in settling the accounts of the petty officers, seamen, and others, not officers, on board of any vessel in the employ of the United States, which by any casualty, or in action with the enemy, has been or may be sunk or otherwise destroyed, together with the rolls and papers necessary to the exact ascertainment of the several

accounts of the same at the date of such loss, to assume the last quarterly return of the paymaster of any such vessel as the basis for the computation of the subsequent credits to those on board, to the date of such loss, if there be no official evidence to the contrary. Where such quarterly return has, from any cause, not been made, the accounting officers are authorized to adjust and settle such accounts on principles of equity and justice.

Compensation for personal effects lost. Idem, s. 2.

SEC. 288. The proper accounting officers of the Treasury Department are authorized, in settling the accounts of the petty officers, seamen, and others, not officers, on board of any vessel in the employ of the United States, which, by any casualty, or in action with the enemy, has been or may be sunk or otherwise destroyed, to allow and pay to each person, not an officer, employed on the vessel so sunk or destroyed, and whose personal effects have been lost, a sum not exceeding sixty dollars. as compensation for the loss of his personal effects.

Payment of accounts of deceased petty officers, seamen, etc., of lost vessel. Idem, s. 3. See note 1.

SEC. 289. In case of the death of any such petty officer, seaman, or other person, not an officer, such payment shall be made to the widow, child or children; father, mother, or brothers and sisters jointly, following that order of preference; such credits and gratuity to be paid out of any money in the Treasury not otherwise appropriated.

Mar. 2, 1895.

28 Stat. L., 962. Navy. (Supp., 1892-95, p. 434-435.)

Adjustment of losses by shipwreck, etc. See note 2.

That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers, petty officers, seamen, and others in the naval service of the United States which has been or may hereafter be lost and destroyed in the naval service by shipwreck or other marine disaster, under the following circumstances:

Conditions.

First. When such loss or destruction was without fault or negligence on the part of the claimant.

Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

Payment of prior losses.

And the amount of such loss or losses which have accrued prior to the passage of this Act so ascertained and determined upon settlement by the proper accounting officers of the Treasury shall be paid out of any money in the Treasury not otherwise appropriated,

Report on future losses.

and all losses that shall hereafter accrue shall be certified by the Secretary of the Treasury at the commencement of each regular session to the Speaker of the House of Representatives who shall lay the same before Congress for consideration, and shall be in full for all such loss or damage:

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*Note 1.*—The "legal representatives" of deceased persons are generally their executors or their administrators, but may mean their heirs or next of kin. (Op., III, 29; VII, 60; XIV, 515; C. C., IV, 456; Wallace, XIII, 351.) To insert "marines" and to construe orphans to mean father or mother or brother or sister, would be legislation, not interpretation. (Op., VIII, 28, Aug. 8, 1856, Cushing, on the construction of relief acts.) Where money is due to the heirs of a deceased person and there is a dispute as to the legal descent, the latter question should be decided by the court rather than by the executive officers. (Op. V., 670, Jan. 28, 1853.)

*Note 2.*—This act makes provisions for the naval service somewhat similar to those made in regard to the Army by 1895, March 3, ch. 335 (1 Supp. R. S., 481).

Claims not to be reopened.

*Provided*, That any claim which shall be presented and acted upon under authority of this Act shall be held as finally determined, and shall never thereafter be reopened or considered:

War losses.

*And provided further*, That this Act shall not apply to losses sustained in time of war:

Limit of liability.

*And provided further*, That the liability of the Government under this Act shall be limited to such articles of personal property as are required by the United States Naval Regulations, and in force at the time of loss or destruction, for such officers, petty officers, seamen, or others engaged in the public service, in the line of duty:

Amounts deducted. R. S., secs. 288-290.

*And provided further*, That the amounts which have been paid to persons in the naval service under sections two hundred and eighty-eight, two hundred and eighty-nine, and two hundred and ninety of the Revised Statutes shall be deducted in the settlement of all claims under this Act:

Determining value.

*And provided further*, That the value of the article or articles lost or destroyed shall be their value at the date of loss or destruction:

To be presented in two years.

*And provided further*, That all claims now existing shall be presented within two years, and not after, from the passage of this Act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction.

Claims barred.

That nothing in this Act shall be construed to authorize the reopening or payment of any claims for losses of private property on vessels sunk or otherwise destroyed prior to August twentieth, eighteen hundred and eighty-four.

Allowance for effects of officer of lost vessel. Apr. 6, 1866, s. 1, v. 14, p. 14. For continuation of pay to officers and crews of lost vessels, see secs. 1574 and 1575, Pay and Allowances, Division I.

SEC. 290. In case any officer of the Navy or Marine Corps on board a vessel in the employ of the United States which, by any casualty, or in action with the enemy, at any time since the nineteenth day of April, eighteen hundred and sixty-one, has been or may be sunk or destroyed, shall thereby have lost his personal effects, without negligence or want of skill or foresight on his part, the proper accounting officers are authorized, with the approval of the Secretary of the Navy, to allow to such officer a sum not exceeding the amount of his sea-pay for one month as compensation for such loss. But the accounting officers shall in all cases require a schedule and certificate from the officer making the claim for effects so lost.

## ADVERTISING.


Sec.
3828. Written authority required.
— Restriction on advertising in the District of Columbia.
— Prices to be paid.
— Papers to be used in the District of Columbia.
Sec.
3709. Advertisement for supplies and services.
3718. Advertisement for provisions, etc., and transportation.


Title 45.

No advertisement without authority.

SEC. 3828. No advertisement, notice, or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of

a written authority for such publication from the head of such Department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority.

July 15, 1870, s. 2, v. 16, p. 308. See note 1.

In no case of advertisement for contracts for the public service shall the same be published in any newspaper published and printed in the District of Columbia unless the supplies or labor covered by such advertisement are to be furnished or performed in said District of Columbia.

July 31, 1876.

Restriction on advertising in the District of Columbia.

July 13, 1876, ch. 246, v. 19, p. 102.

Hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several Departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise. * * * But the heads of the several Departments may secure lower terms at special rates whenever the public interest requires it.

June 20, 1878.

Prices to be paid.

June 20, 1878, ch. 359, v. 20, p. 216-306.

19 A. G. op. p. 159-160.

All advertising required by existing laws to be done in the District of Columbia by any of the Departments of the Government shall be given to one daily and one weekly newspaper of each of the two principal political parties, and to one daily and one weekly neutral newspaper: *Provided*, That the rates of compensation for such service shall in no case exceed the regular commercial rate of the newspapers selected; nor shall any advertisement be paid for unless published in accordance with section thirty-eight hundred and twenty-eight of the Revised Statutes.

Jan. 21, 1881.

Advertisements in the District of Columbia.

SEC. 2. All laws or parts of laws inconsistent herewith are hereby repealed.

Jan. 21, 1881, ch. 25, v. 21, p. 317.

SEC. 3709. All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. * * *

Title 43.

Advertisements for proposals.

Mar. 2, 1861, s. 10, v. 12, p. 220. See note 2.

SEC. 3718. * * * In the case of provisions, clothing, hemp, and other materials, the Secretary of the Navy shall advertise, once a week, for at least four weeks, in one or more of the principal papers published in the place where such articles are to be furnished, for sealed proposals for furnishing the same. * * * In the case of transportation of such articles, he shall advertise for a period of not less than five days. * * *

Advertisements for clothing, hemp, etc.

Mar. 3, 1843, v. 5, p. 617. See Jan. 21, 1881.

That section thirty-seven hundred and nineteen of the Revised Statutes be, and the same is hereby, amended by adding thereto the following:

May 25, 1896.

29 Stat. L., 136. Supp. R. S., vol. 2, p. 474.

Naval supplies.

R. S., § 3719.

*Note 1.*—The provisions of section 3828, forbidding the publication of advertisements for any Executive Department of the Government, or for any bureau thereof, or for any office therewith connected, except "under written authority from the head of the Department," extend to offices connected as aforesaid, no matter where located. (Op., XVI, 616, Phillips, Dec. 16, 1878.)

*Note 2.*—As to advertisements, etc., on contracts for the naval service, see 1893, Mar. 3, ch. 212, par. 6, note (5), *ante*, p. 131, and 1894, Jan. 27, ch. 22, and notes, *ante*, p. 169.

Certified check may be accepted as security for proposals, etc.

"*Provided*, That the Secretary of the Navy may, in his discretion, accept, in lieu of the written guaranty required to accompany a proposal for naval supplies, and in lieu of the bond required for the faithful performance of a contract for furnishing such supplies, a certified check, payable to the order of the Secretary of the Navy, for the full amount of such proposal or contract, the check to be held by the Secretary of the Navy until the requirements of the proposal or contract shall be complied with and as a guaranty for compliance with the same."

## APPROPRIATIONS—ESTIMATES.


Sec.
430. Estimates for expenses.
3660. Manner of communicating estimates.
3661. Estimates for printing and binding.
3662. Estimates for salaries.
3663. Requisites of estimates for appropriations for public works.
3664. What additional explanations are required.
3665. Amount of outstanding appropriation to be designated.
3666. Items of expenditure to be specified in estimates and accounts.
Estimates for pay of Navy.
3667. Estimates of claims, etc., on Navy pension fund.
3669. Estimates to be submitted to Congress.
3670. What statements shall accompany estimates.
3672. Sales of public property to be included in Book of Estimates.
Estimates to be furnished by 1st October.
3673. Drafts of War and Navy Departments.
Act June 19, 1878. Requisitions of Secretary of Navy for advances.
Sec.
3675. Form of drawing and charging warrants.
3676. Appropriations for Navy controlled by Secretary; for each Bureau to be kept separately.
3678. Application of moneys appropriated.
3679. No expenditures beyond appropriations.
3681. Expenses of commissions and inquiries.
3682. Contingent, etc., expenses.
3685. Special appropriations available only for two years, except, etc.
3686. Foreign hydrographic surveys.
3689. Permanent indefinite appropriations.
3690. Expenditure of balances of appropriations.
3691. Disposals of balances after two years.
Unexpended balances of appropriations.
3692. Proceeds of certain sales of material.
Act June 19, 1878. Statement of receipts, expenditures, and balances.


Title 10.

Estimates for expenses.
July 5, 1862, s. 5, v. 12, p. 511.
See sec. 366, same title.

SEC. 430. All estimates for specific, general, and contingent expenses of the Department, and of the several Bureaus, shall be furnished to the Secretary of the Navy by the chiefs of the respective Bureaus.

Title 41.

Manner of communicating estimates.
Aug. 26, 1842, s. 14, v. 5, p. 525.
See Mar. 3, 1875, sec. 3672, same title.

SEC. 3660. The heads of Departments, in communicating estimates of expenditures and appropriations to Congress, or to any of the committees thereof, shall specify, as nearly as may be convenient, the sources from which such estimates are derived, and the calculations upon which they are founded, and shall discriminate between such estimates as are conjectural in their character and such as are framed upon actual information and applications from disbursing officers. They shall also give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large, or of the Revised Statutes, as the case may be, and the section of the act in which the authority is to be found.

And hereafter the estimates for pay of the Navy shall be submitted in the book of estimates in detailed classifications and paragraphs, after the manner above set forth. * * *

Feb. 23, 1881.
21 Stat. L., 331.
Classification in Book of Estimates.

R. S., secs. 429, 3660, 3666. 1875, Mar. 3, ch. 29, s. 3, p. 72.

SEC. 3661. The head of each of the Executive Departments, and every other public officer who is authorized to have printing and binding done at the Congressional Printing-Office for the use of his Department or public office, shall include in his annual estimate for appropriations for the next fiscal year such sum or sums as may to him seem necessary "for printing and binding, to be executed under the direction of the Congressional Printer."

Estimates for printing and binding.
May 8, 1872, s. 2, v. 17, p. 82.

SEC. 3662. All estimates for the compensation of officers authorized by law to be employed shall be founded upon the express provisions of law, and not upon the authority of executive distribution.

Estimates for salaries.
Mar. 3, 1855, s. 8, v. 10, p. 670.

SEC. 3663. Whenever any estimate submitted to Congress by the head of a Department asks an appropriation for any new specific expenditure, such as the erection of a public building, or the construction of any public work, requiring a plan before the building or work can be properly completed, such estimate shall be accompanied by full plans and detailed estimates of the cost of the whole work. All subsequent estimates for any such work shall state the original estimated cost, the aggregate amount theretofore appropriated for the same, and the amount actually expended thereupon, as well as the amount asked for the current year for which such estimate is made. And if the amount asked is in excess of the original estimate, the full reasons for the excess, and the extent of the anticipated excess, shall be also stated.

Requisites for estimates for appropriation for public works.
June 17, 1844, s. 2, v. 5, p. 693; Mar. 3, 1855, s. 8, v. 10, p. 670; Feb. 27, 1877, v. 19, p. 249.
See sec. 3734, Contracts and Supplies, Division I.

It shall be the duty of the head of each Executive Department or other Government establishment in the city of Washington to submit to the first regular session of the Fifty-fourth Congress, and annually thereafter, in the Annual Book of Estimates, a statement as to the condition of business in his Department or other Government establishment, showing whether any part of the same is in arrears, and, if so, in what divisions of the respective bureaus and offices of his Department or other Government establishment such arrears exist, the extent thereof, and the reasons therefor, and also a statement of the number and compensation of employees appropriated for in one bureau or office who have been detailed to another bureau or office for a period exceeding one year.

Mar. 2, 1895.
Supp. R. S. 1892-95, p. 419.
Statement of condition of business to be submitted in estimates.

SEC. 3664. Whenever the head of a Department, being about to submit to Congress the annual estimates of expenditures required for the coming year, finds that the usual items of such estimates vary materially in amount from the appropriation ordinarily asked for the object named, and especially from the appropriation granted for the same objects for the preceding year, and whenever new items

What additional explanations are required.
Ibid.
See Mar. 3, 1875.

not theretofore usual are introduced into such estimates for any year, he shall accompany the estimates by minute and full explanations of all such variations and new items, showing the reasons and grounds upon which the amounts are required, and the different items added.

Amount of outstanding appropriations to be designated.
June 2, 1858, s. 2, v. 11, p. 308.
See sec. 429, Navy Department.—Reports to be made by the Secretary of the Navy.

SEC. 3665. The head of each Department, in submitting to Congress his estimates of expenditures required in his Department during the year then approaching, shall designate not only the amount required to be appropriated for the next fiscal year, but also the amount of the outstanding appropriation, if there be any, which will probably be required for each particular item of expenditure.

Items of expenditure to be specified in estimates and accounts.
June 22, 1860, s. 1, v. 12, p. 81.

SEC. 3666. The estimates for expenditures required by the Department of the Navy for the following purposes shall be given in detail, and the expenditures made under appropriations therefor shall be accounted for so as to show the disbursements of each Bureau under each respective appropriation:

First. Freight and transportation.

Second. Printing and stationery.

Third. Advertising in newspapers.

Fourth. Books, maps, models, and drawings.

Fifth. Purchase and repair of fire-engines and machinery.

Sixth. Repairs of and attending to steam-engine in navy-yards.

Seventh. Purchase and maintenance of horses and oxen, and driving teams.

Eighth. Carts, timber-wheels, and the purchase and repair of workmen's tools.

Ninth. Postage of public letters.

Tenth. Fuel, oil, and candles for navy-yards and shore-stations.

Eleventh. Pay of watchmen and incidental labor not chargeable to any other appropriation.

Twelfth. Transportation to, and labor attending the delivery of provisions and stores on foreign stations.

Thirteenth. Wharfage, dockage, and rent.

Fourteenth. Traveling expenses of officers and others under orders.

Fifteenth. Funeral expenses.

Sixteenth. Store and office rent, fuel, commissions, and pay of clerks to navy-agents and store-keepers.

Seventeenth. Flags, awnings, and packing-boxes.

Eighteenth. Premiums and other expenses of recruiting.

Nineteenth. Apprehending deserters.

Twentieth. Per-diem pay to persons attending courts-martial, courts of inquiry, and other services authorized by law.

Twenth-first. Pilotage and towage of vessels, and assistance to vessels in distress.

See sec. 430

Twenty-second. Bills of health and quarantine expenses of vessels of the United States Navy in foreign ports.

Hereafter the estimates for pay of the Navy shall be submitted in the book of estimates in detailed classifications and paragraphs, after the manner above set forth.

Feb. 23, 1881.

Estimates for pay of the Navy. Feb. 23, 1881, v. 21, p. 331. See note 1.

SEC. 3667. The Secretary of the Navy shall annually submit to Congress estimates of the claims and demands chargeable upon and payable out of the naval pension fund.

Title 41.

Estimates for Navy pension fund. July 11, 1870, v. 16, p. 222.

SEC. 3669. All annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the book of estimates prepared under his direction.

Estimates to be submitted to Congress. Sept. 2, 1789, s. 2, v. 1, p. 65; Mar. 10, 1800, v. 2, p. 79; Jan. 7, 1846, res., v. 9, p. 108; Aug. 4, 1854, s. 15, v. 10, p. 573; May 18, 1865, s. 4, v. 14, p. 49.

SEC. 3670. The Secretary of the Treasury shall annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former acts.

What statements shall accompany estimates. May 1, 1820, s. 8, v. 3, p. 568.

SEC. 3672. A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind, except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law, shall be included in the appendix to the book of estimates.

Statement of proceeds of sales of old material. May 8, 1872, s. 5, v. 17, p. 83; Feb. 27, 1877, v. 19, p. 249.

That it shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the first day of October of each year, their annual estimates for the public service, to be included in the book of estimates prepared by law under his direction; and the Secretary of the Treasury shall submit, as a part of the appendix to the book of estimates, such extracts from the annual reports of the several heads of Departments and Bureaus as relate to estimates for appropriations, and the necessities therefor.

Mar. 3, 1875.

Estimates, when to be furnished. Extracts from reports to be included in appendix to estimates. Mar. 3, 1875, s. 3, v. 18, p. 340.

## APPROPRIATIONS.

SEC. 3673. All moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury, by warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of those Departments, respectively, countersigned by the Second Comptroller of the Treasury, and registered by the proper Auditor.

Title 41.

Drafts for War and Navy Departments. May 7, 1822, s. 3, v. 3, p. 689; Mar. 3, 1817, ss. 5, 9, v. 3, p. 367.

See note 2. See ss. 273, 277, under Accounts.

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*Note 1.*—Paragraph I. Pay of active list; II. Pay of retired list; III. Pay of petty officers and seamen; IV. Pay of clerks, secretaries, mileage, etc., giving classification and number in each case, when possible.

*Note 2.*—The different subdivisions ordinarily employed in an appropriation act, viz, legislative, executive, judicial, are intended to classify the appropriations and not to designate the Department to which they belong. (C. C., XI, 152; 91 U. S. R., 317.)

*Appropriations:* Permanent, those for an indefinite period; indefinite, those in which no amount is named. *Unexpended balances* may be applied to expenses prop-

June 19, 1878.

20 Stat. L., 167. Supp. R. S., p. 193-4, s. 1, v. 20, p. 167.

Requisitions of Secretary of Navy for advances; how issued. R. S., s. 3673.

Use of appropriations for pay of Navy limited. 18 Opins., 412.

That the Secretary of the Navy be, and he is hereby, authorized to issue his requisitions for advances to disbursing officers and agents of the Navy under a "General account of advances," not to exceed the total appropriation for the Navy, the amount so advanced to be exclusively used to pay current obligations upon proper vouchers and that "Pay of the Navy" shall hereafter be used only for its legitimate purpose, as provided by law.

Advances, how charged. R. S., s. 283.

SEC. 2. That the amount so advanced be charged to the proper, appropriations, and returned to "General account of advances" by pay and counter warrant; the said charge, however to particular appropriations, shall be limited to the amount appropriated to each.

Settlements, etc., by Fourth Auditor. R. S., s. 277, par. 5.

SEC. 3. That the Fourth Auditor shall declare the sums due from the several special appropriations upon complete vouchers, as heretofore, according to law; and he shall adjust the said liabilities with the "General account of advances."

Form of drawing and charging warrants. Mar. 3, 1809, s. 1, v. 2, p. 535; Sept. 2, 1789, s. 6, v. 1, p. 67.

SEC. 3675. All warrants drawn by the Secretary of the Treasury, upon the Treasurer of the United States, shall specify the particular appropriation to which the same should be charged; and the moneys paid by virtue of such warrants shall, in conformity therewith, be charged to such appropriation in the books of the Secretary, First Comptroller, and Register.

Appropriation for Navy controlled by Secretary; for each Bureau to be kept separately. July 5, 1862, s. 5, v. 12, p. 511. See note 3.

SEC. 3676. All appropriations for specific, general, and contingent expenses of the Navy Department shall be under the control and expended by the direction of the Secretary of the Navy, and the appropriation for each Bureau shall be kept separate in the Treasury.

Mar. 3, 1893.

"Pay miscellaneous" to be credited with certain receipts. R. S., sec. 3676.

And hereafter the accounting officers of the Treasury are hereby authorized to credit appropriation "Pay miscellaneous," with all receipts for interest on the account of the Navy Department with the London fiscal agents, premiums arising from sales of bills of exchange, and from any appreciation in the value of foreign coin.

Applications of moneys appropriated.

SEC. 3678. All sums appropriated for the various branches of expenditure in the public service shall be applied solely

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erly incurred within the year, and upon contracts made within the year, but not performed until later. Appropriations which in terms are for one year can not be used for payment of expenses not incurred in the year. Money can not be taken by counter requisition to settle old accounts. (Op., XIII, 289, July 27, 1870, Akerman.)

*Note 3.*—The Secretary of the Navy can draw on the contingent fund for purposes of a contingent character—that is, such as might or might not happen, and which Congress could not easily foresee, and therefore could not provide for definitely. (Op., I, 302, Wirt.)

The words "Contingent expenses," as used in the appropriation acts, mean such incidental, casual expenses as are necessary, or at least appropriate and convenient, in order to the performance of the duties *required by law* of the Department or the office for which the appropriation is made. (Op., XVI, 412, Devens, Dec. 19, 1879.)

The appropriations for "Contingent of the bureaus (Civil)" are merged with that for the Secretary's Office by legislative act approved March 3, 1883.

Damages occasioned by collision in which a naval vessel is at fault, even when occurring in foreign waters, are not a proper charge against the contingent fund or any other regular appropriation. Special authority of Congress must be obtained before payments on such account will be allowed by the accounting officers.

to the objects for which they are respectively made, and for no others.

Mar. 3, 1809, s. 1, v. 2, p. 535; Feb. 12, 1868, s. 2, v. 15, p. 36.

See note 4.

SEC. 3679. No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.

No expenditures beyond appropriations. July 12, 1870, s. 7, v. 16, p. 251.

See note 5.

See ss. 3732, 3733, 5503, Contracts and Supplies, Division I.

SEC. 3681. No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission of inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges * * *.

Aug. 26, 1842, s. 25, v. 5, p. 533; see Op., IV, p. 106, Oct. 25, 1842.

SEC. 3682. No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation.

Restrictions on contingent, etc., appropriations. Idem. s. 3, p. 250.

See under Contingent Funds.

SEC. 3685. * * * In no case shall any special appropriation be available for more than two years without further provision of law. [Exception for establishing light-houses.]

Special appropriation available for two years. June 10, 1872, s. 1, v. 17, p. 355.

SEC. 3686. All appropriations made for the preparation or publication of foreign hydrographic surveys shall only be applicable to their object, upon the approval by the Secretary of the Navy, after a report from three competent naval officers, to the effect that the original data for proposed charts are such as to justify their publication; and it is hereby made the duty of the Secretary of the Navy to order a board of three naval officers to examine and report upon the data, before he shall approve of any application of money to the preparation or publication of such charts or hydrographic surveys.

Foreign hydrographic surveys. Feb. 21, 1861, s. 7, v. 12, p. 150

SEC. 3689. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively; and such appropriations shall be deemed permanent annual appropriations. * * *

Permanent indefinite appropriations. May 18, 1872, s. 2, v. 17, p. 134. 19 A. G. Op., p. 685.

Allowance for reduction of wages under eight-hour law:

Of such sum as may be required in the settlement of all accounts for the services of laborers, workmen, and mechan-

See s. 3738, Contracts and Supplies, Division I.

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*Note 4.*—Section 3678 extends only to such cases as relate to "proceeds of sales"—receipts which are in the nature of revenue belonging to no appropriation, and not available for expenditure without authority from Congress. It does not prohibit one Department from supplying articles to another, and the transfer of appropriations to make reimbursements. (Op., Dec. 20, 1882, Brewster.)

Section 3678 makes unlawful the diversion of funds appropriated for one object of expenditure to another object of expenditure, and forbids an appropriation for any purpose to be thus *enlarged* beyond the amount thereof, as fixed by Congress. The furnishing of articles by one Department to another, and subsequent reimbursements by transfer of appropriation, not a diversion or an enlargement contemplated by this section. (Op., Dec. 20, 1882, Brewster.)

*Note 5.*—No contract can be made for rent of buildings until appropriations are made therefor.

ics employed by or on behalf of the Government, between the twenty-fifth day of June, eighteen hundred and sixty-eight, the date of the act constituting eight hours a day's work for all such laborers, workmen, and mechanics, and the nineteenth day of May, eighteen hundred and sixty-nine, the date of the proclamation of the President concerning such pay, to settle and pay for the same without reduction on account of reduction of hours of labor by said act, when it shall be made to appear that such was the sole cause of the reduction of wages.

Indemnity to seamen and marines for lost clothing:

July 4, 1864, ss. 2, 3, v. 13, p. 390.

To allow and pay to each person, not an officer, employed on a vessel of the United States, sunk or otherwise destroyed, and whose personal effects have been lost, a sum not exceeding sixty dollars. In the event of the death of the person, this sum is to be paid to his proper legal representatives.

Prize money to captors:

June 30, 1864, s. 16, v. 13, p. 311.

For one moiety of the proceeds of prizes captured by vessels of the United States, to be distributed to the officers and crews thereof, in conformity to the provisions of Title "PRIZE;" also, the proceeds of derelict and salvage cases adjudged by the courts of the United States to salvors.

Expenditure of balances of appropriations.
July 12, 1870, s. 5, v. 16, p. 251.
See sec. 3689.

SEC. 3690. All balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.

Disposal of balances after two years.
July 12, 1870, s. 6, v. 16, p. 251.
See June 20, 1874.

SEC. 3691. All balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts, for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the Auditor of the Treasury, whose duty it is to settle accounts thereunder, and the Auditor shall examine the books of his Office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in his Office; and if it appears that such balances will not be required for this purpose, then the Secretary may include such balances in his surplus-fund warrant, whether the head of the proper Department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated.

July 26, 1886.

Balances of appropriations to pay Navy; when to be covered into Treasury.

All balances of moneys appropriated for the pay of the Navy or pay of the Marine Corps, for any year existing after the accounts for said year shall have been settled shall be covered into the Treasury.

R. S. secs. 250, 360, 3691; June 20, 1874, ch. 328, s. 5; Aug. 30, 1890, ch. 837, s. 4.

That from and after the first day of July, eighteen hundred and seventy-four, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, light-houses, fortifications, public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress * * * *And provided further*, That this section shall not operate to prevent the fulfillment of contracts existing at the date of the passage of this act.

June 20, 1874.

Unexpended balances to be covered into the Treasury.

Exceptions, to continue available.

Existing contracts not affected.

June 20, 1874, s. 5, v. 18, p. 85; June 14, 1878, s. 4, v. 20, p. 130.

See note 6.

Title 41.

SEC. 3692. All moneys received from the leasing or sale of marine hospitals, or the sale of revenue cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army, or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.

Proceeds of certain sales, etc., of material.

May 8, 1872, s. 5, v. 17, p. 83; Mar. 3, 1847, s. 1, v. 9, p. 171; Apr. 20, 1866, ss. 1, 2, v. 14, p. 40; July 28, 1866, s. 25, v. 14, p. 336; June 8, 1872, v. 17, p. 337; Mar. 3, 1875, v. 18, pp. 388, 410; Feb. 27, 1877, v. 19, p. 249.

From and after the passage of this act, it shall be the duty of the Secretary of the Treasury to transmit to Congress, annually, a tabular statement showing in detail the receipts and expenditures in the naval service under each appropriation, as made up and determined by the proper officers of the Treasury Department, upon the accounts of disbursing officers rendered for settlement.

June 19, 1878.

Tabular statement of Navy appropriations and expenditures.

There shall be appended to this statement an account of balances in the hands of disbursing agents at the close of each fiscal year, and a report of any amounts lost or unaccounted for by voucher.

Statement of balances in hands of the disbursing officers, and amounts lost.

June 19, 1878, ch. 312, ss. 1, 2, v. 20, p. 167.

*Note 6.*—This section was adopted, after the fullest consideration by Congress, expressly to cut off the payment of accrued claims by covering into the Treasury, after two years, the balance of the appropriation from which they might have been paid. The plain purpose of this act was to confine the officers of the Government to the allowance and payment of liabilities within three fiscal years. Decision of the Secretary of the Treasury, April 20, 1877. The use of appropriations is discussed in this decision.

## ATTORNEY-GENERAL—DEPARTMENT OF JUSTICE.

Sec.
354. Duties of Attorney-General.
356. Opinion of Attorney-General upon questions of law.
357. Legal advice to Departments of War and Navy.
358. Reference of questions by Attorney-General to subordinates.
359. Conduct and argument of cases.
360. Duties of officers of Department of Justice.
361. Officers of, to perform services for other Departments.
363. Retaining counsel to aid district attorneys.
364. Attendance of counsel.
365. Counsel fees restricted.
366. Appointment of special counsel.
367. Detail of officers to attend suits.
370. Traveling expenses of officers so detailed.
383. Publication of opinions.

Title 8.

Duties of Attorney-General.
Sept. 24, 1789, s. 35, v. 1, p. 92; Feb. 27, 1877, v. 19, p. 241.
Opinion of Attorney-General upon questions of law.
June 22, 1870, s. 6, v. 16, p. 163.
See note 1.

SEC. 356. The head of any Executive Department may require the opinion of the Attorney-General on any questions of law arising in the administration of his Department.

Legal advice to Departments of War and Navy.
Idem.

SEC. 357. Whenever a question of law arises in the administration of the Department of War or the Department of the Navy, the cognizance of which is not given by statute to some other officer from whom the head of the Department may require advice, it shall be sent to the Attorney-General, to be by him referred to the proper officer in his Department, or otherwise disposed of as he may deem proper.

Officers of the Department to perform all legal services required for other Departments.
Idem, s. 14.

SEC. 361. The officers of the Department of Justice, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus and other

*Note 1.*—The law does not declare the effect of advice; practice of the Departments to heed it. (Op., V, 97, Johnson.)

Not the duty of the Attorney-General to give opinions on questions of fact, nor to review the proceedings of a court-martial in search of questions of law. (Op., V, 626, Crittenden.)

Does not reply to speculative points or supposed cases. Gives advice on actual cases where the special facts are set forth by the Department. (Op., IX, 82, Black.; XIII, 531-568, Akerman; XII, 433, Browning.)

The opinion of the Attorney-General for the time being is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case unless, on appeal by such Secretary to the common superior of himself and the Attorney-General, namely, the President of the United States, it is by the latter overruled. (Op., VII, 692, Cushing.)

Will not review the opinion of a former Attorney-General unless a proper case is presented therefor and submitted by a head of a Department. (Op., XI, 189, Speed.)

Can not act as *arbitrator* between the Government and an individual, and can therefore render no *award* in the sense in which the phrase is generally understood. (Op., I, 209, Wirt.) Declines to give an opinion upon a question involving the estimation of the weight and credibility of testimony. (Op., XIV, p. 54, Bristow.)

Not required to give an opinion to the Senate. (Op., X, 165, Bates.) Not his duty to give opinion on matters pending in Congress on request of either house or any committee. (Op., XII, 544, Evarts; XIV, 17, 177, Williams.) Not authorized to give an opinion (official) in response to a call of the head of a Department, although made at the request of a committee of Congress, where the question proposed does not arise in the administration of such Department. (Op., XV, 138, Taft.)

Subordinate officers who desire an official opinion must seek it through the head of the Department to which said subordinate is accountable. (Op., X, 458.) No right to give an official opinion except where it is his duty to do so, that is, to the President and heads of Departments. (Op., I, 335, VI, 21, 147.) See Op. XIV, 21, declining to approve or disapprove of an opinion of an assistant attorney-general of an Executive Department—not having been called for by the President or the head of a Department.

officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counselor at law for any service herein required of the officers of the Department of Justice, except in the cases provided by section three hundred and sixty-three.

Retaining counsel to aid district attorneys. Aug. 2, 1861, s. 2, v. 12, p. 285; Mar. 3, 1869, s. 1, v. 15, p. 294; Apr. 10, 1869, v. 16, p. 46; June 22, 1870, s. 16, v. 16, p. 164.

SEC. 363. The Attorney-General shall, whenever in his opinion the public interest requires it, employ and retain, in the name of the United States, such attorneys and counselors at law as he may think necessary to assist the district attorneys in the discharge of their duties, and shall stipulate with such assistant attorneys and counsel the amount of compensation, and shall have supervision of their conduct and proceedings.

Attendance of counsel. Feb. 14, 1871, s. 3, v. 16, p. 412. See sec. 187, Claims, p. 00.

SEC. 364. Whenever the head of a Department or Bureau gives the Attorney-General due notice that the interests of the United States require the service of counsel upon the examination of witnesses touching any claim, or upon the legal investigation of any claim, pending in such Department or Bureau, the Attorney-General shall provide for such service.

## ATTORNEYS AND AGENTS OF GOVERNMENT.

Sec.
187. Professional assistance.
189. Employment of attorneys or counsel.
1550. Agents to disburse money abroad.
1783. Persons interested not to act as agents of the Government.
3614. Bond of special agents.

Title 4.

Professional assistance; how obtained. Feb. 14, 1871, s. 3, v. 16, p. 412. See sec. 184, Claims.

SEC. 187. Whenever any head of a Department or Bureau having made application pursuant to section one hundred and eighty-four, for a subpœna to procure the attendance of a witness to be examined, is of opinion that the interests of the United States require the attendance of counsel at the examination, or require legal investigation of any claim pending in his Department or Bureau, he shall give notice thereof to the Attorney-General, and of all facts necessary to enable the Attorney-General to furnish proper professional service in attending such examination, or making such investigation, and it shall be the duty of the Attorney-General to provide for such service.

Employment of attorneys or counsel. June 22, 1870, s. 17, v. 16, p. 164. See secs. 364, 365, Attorney-General.

SEC. 189. No head of a Department shall employ attorneys or counsel at the expense of the United States; but when in need of counsel or advice, shall call upon the Department of Justice, the officers of which shall attend to the same.

Title 15, chap. 7.

Appointment of persons to disburse money on foreign stations. June 17, 1844, s. 4, v. 5, p. 703.

SEC. 1550. No person shall be employed or continued abroad, to receive and pay money for the use of the naval service on foreign stations, whether under contract or otherwise, who has not been, or shall not be, appointed by and with the advice and consent of the Senate.

Title 19.

Persons interested not to act as agents of the Government.
Mar. 2, 1863, s. 8, v. 12, p. 698.

SEC. 1783. No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation or firm; and every such officer, agent, or member, or person, so interested, who so acts, shall be imprisoned not more than two years, and fined not more than two thousand dollars nor less than five hundred dollars.

See note 2.

Title 40.

Bond of special agents.
Aug. 4, 1854, s. 14, v. 10, p. 573.
See note 1.
See same sec., Title Disbursing Officers.

SEC. 3614. Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve.

## CIVIL SERVICE—THE EXECUTIVE DEPARTMENTS.


Sec.
163. Classification of Department clerks.
165. Clerkships open to women.
166. Distribution of clerks.
167. Salaries of persons employed in the Departments.
168. Temporary clerks.
169. Authority to employ clerks and other employees.
—— Restriction.
170. Extra compensation to clerks prohibited.
Act Aug. 5, 1882. Restriction on employing extra clerks and their pay.
—— Employees not to be paid from contingent fund.
—— Unauthorized rates of pay forbidden.
—— Lapsed salaries, disposition of.
1753. Admission to the civil service.
Act Jan. 16, 1883. Civil Service Commissioners.
Sec.
—— Duties of.
—— Rules for civil-service act.
—— Places of meeting; boards of examiners.
—— Corruptly defeating objects of the commission.
—— Revision and classification of clerks.
—— Persons subject to, and exempt from, the rules.
—— Habitual use of intoxicating beverages a bar against appointment to civil office.
—— Recommendations of Congressmen not to be received except, etc.
1754. Preference to disabled soldiers, etc.
1755. Honorably discharged soldiers, etc., commended to bankers, etc.
Act Aug. 15, 1876. In reducing force, preference to honorably discharged soldiers, etc., for.


Title 4.

Classification of Department clerks.
Mar. 3, 1853, s. 3, v. 10, p. 209; Mar. 3, 1855, s. 4, v. 10, p. 669.

SEC. 163. The clerks in the Departments shall be arranged in four classes, distinguished as the first, second, third, and fourth classes.

Clerkships open to women.

SEC. 165. Women may, in the discretion of the head of any Department, be appointed to any of the clerkships

*Note 1.*—No allowance can be made for any commission or inquiry, except military or naval, until special appropriations are made by Congress for the purpose. (Op., IV, 106, Oct. 25, 1842, Legare.)

An Executive Department being charged with the duty of seeing that the laws are faithfully executed, has authority to appoint commissioners or agents to make investigations required by acts or resolutions of Congress, but it can not pay them except from an appropriation for that purpose. (Op., IV, 248, Nelson, Sept. 21, 1843.)

An authority of a special agent appointed to do a particular act must be limited to that act and to such acts as are necessary to the performance of it. (Op., XI, 521.)

The Government is not bound by the act or declaration of its agent unless it manifestly appears that he acted within the scope of his authority, or was employed in his capacity as a public agent to do the act or make the declaration for it. (Otto, 93, p. 247. See C. C., II, 599; IV, 401, and VII, 65, and Wallace, VII, 666, as to the power of agents.)

*Held* by the First Comptroller, that a chief engineer of the Navy, appointed superintendent of the State, War, and Navy Department building, under the legislative appropriation act approved March 3, 1893, should give a bond, as his duties as such were in no way connected with the Navy and his disbursements would be of civil appropriations. See Title, Navy Department. (State, War and Navy Building.)

*Note 2.*—The employment of any officer of the Navy or Marine Corps by any person or corporation furnishing naval supplies or war material to the Government is declared to be unlawful by act of June 10, 1896. (29 Stats. L., 361.)

therein authorized by law, upon the same requisites and conditions, and with the same compensations, as are prescribed for men.

July 12, 1870, s. 2, v. 16, pp. 230-250.

"SEC. 166. Each head of a Department may, from time to time, alter the distribution among the various bureaus and offices of his Department, of the clerks and other employees allowed by law, except such clerks or employees as may be required by law to be exclusively engaged upon some specific work, as he may find it necessary and proper to do,

May 25, 1896.

29 Stat. L., 138. Supp. vol. 2, p. 477.

*Substitute for* R. S., § 166.

Executive Departments.

Temporary detail of clerks.

but all details hereunder shall be made by written order of the head of the Department,

—to be by written order.

and in no case be for a period of time exceeding one hundred and twenty days.

—limited to 120 days.

*Provided*, That details so made may, on expiration, be renewed from time to time by written order of the head of the Department, in each particular case, for periods of not exceeding one hundred and twenty days. All details heretofore made are hereby revoked, but may be renewed as provided herein."

—may be renewed.

SEC. 167. The annual salaries of clerks and employés in the Departments, whose compensation is not otherwise prescribed, shall be as follows:

Salaries of persons employed in the Departments.

Mar. 3, 1853, s. 3, v. 10, pp. 209, 210; Apr. 22, 1854, s. 1, v. 10, p. 276; Aug. 18, 1856, res. 18, v. 11, p. 145; July 23, 1866, s. 6, v. 14, p. 207; July 12, 1870, s. 3, v. 16, pp. 230, 250.

First. To clerks of the fourth class, eighteen hundred dollars.

Second. To clerks of the third class, sixteen hundred dollars.

Third. To clerks of the second class, fourteen hundred dollars.

Fourth. To clerks of the first class, twelve hundred dollars.

Fifth. To the women employed in duties of a clerical character, subordinate to those assigned to clerks of the first class, including copyists and counters, or temporarily employed to perform the duties of a clerk, nine hundred dollars.

Sixth. To messengers, eight hundred and forty dollars.

Seventh. To assistant messengers, seven hundred and twenty dollars.

Eighth. To laborers, seven hundred and twenty dollars. [$660, by legislative act March 3, 1883, except otherwise specially appropriated for.]

Ninth. To watchmen, seven hundred and twenty dollars.

SEC. 168. Except when a different compensation is expressly prescribed by law, any clerk temporarily employed to perform the same or similar duties with those belonging to clerks of either class, is entitled to the same salary as is allowed to clerks of that class.

Temporary clerks.

Apr. 22, 1854, s. 1, v. 10, p. 276. See note 1.

SEC. 169. Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and

Authority to employ clerks and other employees.

See act Aug. 5, 1882.

*Note 1.*—A clerk with a fixed salary is bound to perform the duties of the office for the salary. If the work of the office be increased, requiring his services beyond the established or customary hours, he can not, if the increased labor pertains to the business of the office, receive additional compensation. (C. C., XVII, 383.)

other employés, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year.

Aug. 15, 1876.

Restriction. Aug. 15, 1876, s. 5, v. 19, p. 196. See note 2. See Aug. 5, 1882.

That the executive officers of the Government are hereby prohibited from employing any clerk, agent, engineer, draughtsman, messenger, watchmen, laborer, or other employé, in any of the Executive Departments in the city of Washington, or elsewhere, beyond provision made by law.

Title 4.

Extra compensation to clerks prohibited. Mar. 3, 1863, s. 3, v. 10, pp. 209, 211; June 17, 1844, s. 1, v. 5, pp. 681, 687; Feb. 28, 1867, res. 30, s. 2, v. 14, p. 569. See sec. 170, Extra Pay, Title, Pay and Allowances, Division I. See note 3.

SEC. 170. No money shall be paid to any clerk employed in either Department at an annual salary, as compensation for extra services, unless expressly authorized by law.

Aug. 5, 1882.

Restriction on number and pay of clerks, etc.

That no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employé shall after the first day of October next be employed in any of the Executive Departments, or subordinate Bureaus or offices thereof at the seat of Government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal services for each fiscal year.

Civil employees not to be paid from contingent appropriations. Ibid.

No civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employé shall hereafter be employed at the seat of Government in any Executive Department or subordinate Bureau or office thereof or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services.

Unauthorized rates of pay forbidden.

After the first day of October next section one hundred and seventy-two of the Revised Statutes, and all other laws and parts of laws inconsistent with the provisions of this act, and all laws and parts of laws authorizing the employment of officers, clerks, draughtsmen, copyists, messengers, assistant messengers, mechanics, watchmen, laborers, or other employés at a different rate of pay or in excess of the numbers authorized by appropriations made by Congress, be, and they are hereby, repealed; and thereafter all

*Note 2.*—In the absence of constitutional restriction, the future compensation of a public officer may be altered at pleasure by the legislature during his incumbency, without violating any legal right vested in him by virtue of his appointment. (Op., XV, 317, Devens, June 18, 1877.)

*Note 3.*—Where the service is one required by law and compensation is fixed by competent authority and is appropriated, an officer who under due authorization performs the service is entitled to the compensation. (Op., XV, 608.)

details of civil officers, clerks, or other subordinate employés from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited; and thereafter all moneys accruing from lapsed salaries, or from unused appropriations for salaries, shall be covered into the Treasury.

Details not to be made from outside District of Columbia for duty therein.

Lapsed salaries.
Ibid.
See note 4.

Title 19.

SEC. 1753. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

President to regulate admissions to the civil service.
Mar. 3, 1871, s. 9, v. 16, p. 514.

Jan. 16, 1883.

22 Stat. L., 403.

The President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

Appointment of Civil Service Commissioners.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

The commissioners shall each receive a salary of three thousand five hundred dollars a year. And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner.

Salary and expenses.

SEC. 2. That it shall be the duty of said commissioners:

Duty of the commissioners.

FIRST. To aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the Departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

SECOND. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

Rules for civil service act.

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or

*Note 4.*—Civil officers are usually divided into three classes: political, judicial and ministerial. But persons actually and properly employed in the Executive Departments or in Bureaus or Divisions thereof, by an officer charged with that duty and authorized by law to fix their compensation, are persons in the civil service. (Wallace, XIII, 568; C. C., VII, 290.)

Laborers, mechanics, machinists, etc., in navy-yards, paid by the day, are civil employees within the meaning of the 20 per cent acts. Printers paid by the *em* or note engravers by the *piece* are not. (Wallace, XX, 179; C. C., IX, 104.)

to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the Departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Seventh, there shall be non-competitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

THIRD. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

FOURTH. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its

own subordinates, and those in the public service, in respect to the execution of this act.

FIFTH. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.

Places of meeting and boards of examiners.

SEC. 3. * * * The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the Department or office in which such persons serve, to be members of boards of examiners, and may at any time substitute any other person in said service living in such State or Territory in the place of any one so selected. Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same.

* * * * * * *

Penalty for corruptly defeating the objects of the commission.

SEC. 5. That any said commissioner, examiner, copyist, or messenger, or any person in the public service who shall willfully and corruptly, by himself or in co-operation with one or more other persons, defeat, deceive, or obstruct any person in respect of his or her right of examination according to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, or to be examined, being appointed, employed, or promoted, shall for each such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment not less than ten days, nor more than one year, or by both such fine and imprisonment.

Revision, classification, and arrangement of clerks by the heads of Departments.

SEC. 6. * * * Third. That from time to time * * * each of the heads of Departments mentioned in the one hundred and fifty-eighth section of the Revised Statutes [*the 7 principal Departments*] and each head of an office,

shall, on the direction of the President, and for facilitating the execution of this act, respectively revise any then existing classification or arrangement of those in their respective Departments and offices, and shall, for the purposes of the examination herein provided for, include in one or more of such classes, so far as practicable, subordinate places, clerks, and officers in the public service pertaining to their respective Departments not before classified for examination.

Persons subject to and exempt from the rules.

SEC. 7. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by the seventeen hundred and fifty-fourth section of the Revised Statutes, nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section of said statutes; nor shall any officer not in the executive branch of the Government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate, be required to be classified or to pass an examination.

Habitual use of intoxicating beverages a bar against appointment.

SEC. 8. That no person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable.

Not more than two of a family eligible.

SEC. 9. That whenever there are already two or more members of a family in the public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades.

Recommendations of Congressmen not to be received, except, etc.

Jan. 16, 1883, 22 Stat. L., p. 406. See note 5.

SEC. 10. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

Jan. 16, 1883.

Stat. L., v. 22, p. 406.

Contributions for political purposes not to be solicited, etc., by certain officers. See sec. 1753.

SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United

States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

—nor received in public offices.

SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

Immunity from official proscription, etc.

SEC. 13. No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

Giving money, etc., to officials for political purposes prohibited. 106 U. S., 371.

SEC. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

Penalty.

SEC. 15. That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court.

* * * * * * *

Title 19.

Preference of persons disabled in military or naval service. Mar. 3, 1865, res. No. 27, s. 1, v. 13, p. 571.

SEC. 1754. Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.

Recommendation for employment of such persons. Idem, sec. 2.

SEC. 1755. In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments.

Aug. 15, 1876.

Preference to discharged soldiers and sailors in matters of reductions. Aug. 15, 1876, s. 3, v. 19, p. 143.

*Provided*, That in making any reduction of force in any of the Executive Departments, the head of such Department shall retain those persons who may be equally qualified, who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors.

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*Note 5.*—There are three branches of service classified under the civil-service act. Those in the Departments at Washington are designated "The classified departmental service." The general board of examiners for this service consists of two persons from the Treasury Department, two from the Post-Office Department, two from the Interior Department, and one from each of the other Departments.

## OATH OF OFFICE, ETC.

Sec.
1756. Official oath—form of.
1757. Oath for certain persons.
1758. Who may administer oath.
1759. Custody of oath.
1778. Other persons before whom oath may be taken.
Act January 16, 1883. Contributions, etc.

**May 13, 1884.**

Supp. R. S., p. 428.

Official oath, form of.

R. S., sec. 1757. Aug. 29, 1890, ch. 820, s. 1.

That section seventeen hundred and fifty-six of the Revised Statutes be, and the same is hereby, repealed;

And hereafter the oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, shall be as prescribed in section seventeen hundred and fifty-seven of the Revised Statutes.

Repeal of R. S., sec. 1756.

But this repeal shall not affect the oaths prescribed by existing statutes in relation to the performance of duties in special or particular sub-ordinate offices and employments.

Existing rights, duties, penalties, etc., not affected.

SEC. 3. That the provisions of this act shall in no manner affect any right, duty, claim, obligation, or penalty now existing or already incurred; and all and every such right, duty, claim, obligation, and penalty shall be heard, tried, and determined, and effect shall be given thereto, in the same manner as if this act had not been passed.

Oath for certain persons.

July 11, 1868, ch. 139, v. 15, p. 85; Feb. 15, 1871, ch. 53, v. 16, p. 412.

SEC. 1757. Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the Constitution is elected or appointed to any office of honor or trust under the Government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

Who may administer oath.

Aug. 6, 1861, s. 2, v. 12, p. 326; Apr. 18, 1876, ch. 66, v. 19, p. 34, as to administering oaths in the Senate.

SEC. 1758. The oath of office required by either of the two preceding sections may be taken before any officer who is authorized either by the laws of the United States, or by the local municipal law, to administer oaths, in the State, Territory, or District where such oath may be administered.

**August 29, 1890.**

26 Stat. L., 370.

No department officer to charge fees for oath of office to employees.

R. S., §§ 1757-1759.

May 13, 1884, ch. 46, *ante*, p. 428.

And no officer, clerk, or employee of any executive department who is also a (1) notary public or other officer authorized to administer oaths, shall charge or receive any fee or compensation for administering oaths of office to employees of such department required to be taken on appointment or promotion therein.

*Note 1.*—For laws as to notaries public in the District of Columbia, see R. S. of D. C., §§ 979-992, 1878, June 7, ch. 162, § 5.

And the Chief Clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion.

Chief Clerks of Departments and bureaus to administer oath of office free.

SEC. 2. [*Superseded by* 1891, *March* 3, *ch.* 548, § 1.]

SEC. 1759. The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six, or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, Department, or court to which the office in respect to which the oath is made may appertain.

Custody of oath. July 2, 1862, ch. 128, v. 12, p. 502.

SEC. 1778. In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, District, or Territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.

Taking oaths or acknowledgments. Sept. 16, 1850, v. 9, p. 458; July 29, 1854, s. 1, v. 10, p. 315.

## DEPARTMENT REGULATIONS.

Sec.
161. Departmental regulations.
Act March 3, 1883. Hours of business.
Act March 3, 1893. Holidays.
173. Chief clerks to supervise subordinate clerks.
174. Chief clerks to distribute duties, etc.
175. Duty of chief on receipt of report.
176. Disbursing clerks.
194. Report of clerks employed.
195. Time of submitting annual reports.
198. Biennial list of employees.

Title 4.

SEC. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

Departmental regulations. July 27, 1789, v. 1, p. 28; Sept. 15, 1789, v. 1, p. 68; Aug. 7, 1849, p. 49; Sept. 2, 1789, v. 1, p. 65; June 8, 1872, v. 17, p. 283; Apr. 30, 1798, v. 1, p. 553; June 22, 1870, s. 8, v. 16, p. 163; Mar. 3, 1849, v. 9, p. 395.

Mar. 3, 1883.

SEC. 4. That hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employés, of whatever grade or class, in their respective Departments not less than seven hours of labor each day, except Sundays and days declared public holidays by law, or executive order: *Provided*, That the heads of the Departments may by special order, stating the reason, further extend or limit the hours of service of any clerk or employé in their Departments respectively, but in case of an extension it shall be without additional compensation, and all absence from the Departments on the part of said clerks or other employés, in excess of such leave of absence as may be

Hours of labor of employees in the Executive Departments. Mar. 3, 1883, chap. 128. 20 A. G. Op., p. 303.

granted by the heads thereof, which shall not exceed thirty days in any one year, except in case of sickness, shall be without pay.

SEC. 5. That all acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

Mar. 3, 1893, sec. 5, Supp. R. S. 1893-1895.

Seven hours of labor required of clerks in Departments.

20 A. G. Op., p. 607.

That on and after July first, eighteen hundred and ninety-three, it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employés of whatever grade or class, in their respective departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or executive order:

Mar. 3, 1883, ch. 128, sec. 4 (1 Supp. R. S., 409).

May be extended or limited.

*Provided*, That the heads of the Department may by special order, stating the reason, further extend or limit the hours of service of any clerk or employé in their Departments, respectively; but in case of an extension it shall be without additional compensation:

Annual and sick leave with pay.

*And provided further*, That the head of any Department may grant thirty days annual and thirty days sick leave with pay in any one year, to each clerk or employé, the sick leave to be allowed in cases of personal illness only, or where some member of the immediate family is afflicted with a contagious disease, and requires the care and attendance of such employé, or where his or her presence in the Department would jeopardize the health of fellow clerks:

Extension of sick leave; limit.

*And be it further provided*, That in exceptional and meritorious cases, where to limit such sick leave would work peculiar hardship, it may be extended, in the discretion of the head of the Department, with pay not exceeding sixty days in any one case or in any one calendar year.

Pay to stop at expiration of granted leave.

This section shall not be construed to mean that so long as a clerk or employé is borne upon the rolls of the Department in excess of the time herein provided for or granted, that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave.

Repeal.

SEC. 6. That all acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

June 28, 1870.

Holidays in the District of Columbia.

June 28, 1870, v. 16, p. 168; Jan. 31, 1879, v. 20, p. 277.

See note 1.

The following days, to wit: The first day of January, commonly called New Year's day, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, commonly called Christmas day, and any day appointed or recommended by the President of the United States as a day of public fast or thanksgiving, shall be

*Note 1.*—The Revised Statutes of the District of Columbia, here referred to, provide as follows:

SEC. 993. The following days, namely: The first day of January, commonly called *New Year's day;* the *fourth day of July;* the twenty-fifth day of December, commonly called *Christmas day;* and any day appointed or recommended by the President of the United States as a *day of public fast or thanksgiving*, shall be holidays within the District, and shall for all purposes of presenting for payment or acceptance, for the maturity and protest, and giving notice of the dishonor of bills of exchange, bank-checks, and promissory notes, or other negotiable or commercial paper, be treated and considered as is the first day of the week, commonly called Sunday.

And all notes, drafts, checks, or other commercial or negotiable paper falling due or maturing on either of said holidays shall be deemed as having matured on the day previous.

Other acts make holidays, of *Inauguration day*, 1888, June 18, ch. 391, *post*, p. 592; *Decoration day*, 1888, August 1, ch. 723, *post*, p. 600; and *Monday, when either falls on Sunday*, 1881, Dec. 21, ch. 2, *post*, p. 331, and give per diem pay to employees, 1885, Jan. 6, Res. No. 5, *post*, p. 486, and 1887, Feb. 23, Res. No. 6, *post*, p. 574.

holidays within the District of Columbia, and shall, for all purposes of presenting for payment or acceptance for the maturity and protest, and giving notice of the dishonor of bills of exchange, bank checks, and promissory notes or other negotiable or commercial paper, be treated and considered as is the first day of the week, commonly called Sunday, and all notes, drafts, checks, or other commercial or negotiable paper falling due or maturing on either of said holidays shall be deemed as having matured on the day previous.

See note 1, p. 190.

That section nine hundred and ninety-three of the Revised Statutes of the United States relating to the District of Columbia be, and the same hereby is, amended by adding to the days therein declared to be holidays within the District the twenty-second day of February; and such day shall be a holiday for all the purposes mentioned in said section: *Provided*, That this act shall not apply to the twenty-second day of February, eighteen hundred and seventy-nine.

**Jan. 31, 1879.**

20 Stat. L., 277.

Holidays in District of Columbia:
22d of February.
New Year's day.
Fourth of July.
Christmas.
Fast day.
Thanksgiving.
Presidential Inauguration day.
Decoration day.
Monday, when either falls on Sunday.

That whenever any day set apart as a legal holiday within the District of Columbia shall fall on the first day of the week, commonly called Sunday, then and in such event the day next succeeding shall be a holiday within the District of Columbia, and shall for all purposes of presenting for payment or acceptance, for the maturity and protest and giving notice of the dishonor of bills of exchange, bank-checks, and promissory notes or other negotiable or commercial paper, be treated and considered as is the first day of the week, commonly called Sunday, and all notes, drafts, checks, or other commercial or negotiable paper falling due or maturing on such holiday shall be deemed as having matured on the Saturday previous.

**Dec. 20, 1881.**

22 Stat. L., 1.

Legal holidays, District of Columbia, falling on Sunday.
R. S. of D. C., § 993.
Jan. 31, 1879, ch. 38, and note.

That the employees of the Navy Yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty at Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive the same pay as on other days.

**Jan. 6, 1885.**

23 Stat. L., 516.

Per diem employees of the Government to receive pay for certain holidays.
Jan. 31, 1879, ch. 38; June 30, 1886, ch. 572; Aug. 1, 1888, ch. 722.

That all per diem employees of the Government, on duty at Washington or elsewhere in the United States, shall be allowed the day of each year, which is celebrated as "Memorial" or "Decoration Day" and the fourth of July of each year, as holiday, and shall receive the same pay as on other days.

**Feb. 23, 1887.**

24 Stat. L., 644.

Per diem employees to be paid for Decoration Day and 4th of July.
Jan. 31, 1879, ch. 38.

That the thirtieth day of May in each year, usually called "Decoration Day," shall be, and hereby is, made a holiday

**Aug. 1, 1888.**

25 Stat. L., 353.

Decoration Day a holiday in District of Columbia.

within the District of Columbia as fully in all respects as are the days mentioned as holidays in section nine hundred and ninety-three of the Revised Statutes of the District of Columbia.

June 28, 1894.

28 Stat. L., 96.

Labor Day a public holiday.

R. S., D. C., § 993.

That the first Monday of September in each year, being the day celebrated and known as Labor's Holiday, is hereby made a legal public holiday, to all intents and purposes, in the same manner as Christmas, the first day of January, the twenty-second day of February, the thirtieth day of May, and the fourth day of July are now made by law public holidays.

Title 4.

Chief clerks to supervise subordinate clerks

Aug. 26, 1842, s. 13, p. 525.

SEC. 173. Each chief clerk in the several Departments, and Bureaus, and other offices connected with the Departments, shall supervise, under the direction of his immediate superior, the duties of the other clerks therein, and see that they are faithfully performed.

Chief clerks to distribute duties, etc.

Idem.

SEC. 174. Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case. He shall revise such distribution from time to time, for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business.

Duty of chief on receipt of report.

Idem.

SEC. 175. Each head of a Department, chief of a Bureau, or other superior officer, shall, upon receiving each monthly report of his chief clerk, rendered pursuant to the preceding section, examine the facts stated therein, and take such measures, in the exercise of the powers conferred upon him by law, as may be necessary and proper to amend any existing defects in the arrangement or dispatch of business disclosed by such report.

Disbursing clerks.

Mar. 3, 1853, s. 3, v. 10, p. 209-211; Mar. 3, 1855, s. 4, v. 10, p. 669; Mar. 3, 1873, s. 1, v. 17, p. 485.

See act Mar. 3, 1883, providing for a superintendent of State, War, and Navy Department building, under "Navy Department."

SEC. 176. The disbursing clerks authorized by law in the several Departments shall be appointed by the heads of the respective Departments, from clerks of the fourth class; and shall each give a bond to the United States for the faithful discharge of the duties of his office according to law in such amount as shall be directed by the Secretary of the Treasury, and with sureties to the satisfaction of the Solicitor of the Treasury; and shall from time to time renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct. Each disbursing clerk, except the disbursing clerk of the Treasury Department, must, when directed so to do by the head of the Department, superintend the building occupied by his Department. Each disbursing clerk is entitled to receive, in compensation for his services in disbursing, such sum in addition to his salary as a clerk of the fourth class as shall make his whole annual compensation two thousand dollars a year.

SEC. 194. The head of each Department shall make an annual report to Congress of the names of the clerks and other persons that have been employed in his Department and the offices thereof; stating the time that each clerk or other person was actually employed, and the sums paid to each; also, whether they have been usefully employed; whether the services of any of them can be dispensed with without detriment to the public service, and whether the removal of any individuals, and the appointment of others in their stead, is required for the better dispatch of business.

Report of clerks employed. Aug. 26, 1842 s. 11, v. 5, p. 525.

SEC. 195. Except where a different time is expressly prescribed by law, the various annual reports required to be submitted to Congress by the heads of Departments shall be made at the commencement of each regular session and shall embrace the transactions of the preceding year.

Time of submitting annual reports. Various acts of Congress.

SEC. 198. The head of each Department shall, as soon as practicable after the *first* day in *July* in each year in which a new Congress is to assemble, cause to be filed in the Department of the Interior a full and complete list of all officers, agents, clerks, and employees employed in his Department, or in any of the offices or Bureaus connected therewith. He shall include in such list all the statistics peculiar to his Department required to enable the Secretary of the Interior to prepare the Biennial Register.

Biennial lists of employees to be filed in Interior Department. Apr. 27, 1816, s. 1, v. 3, p. 342; Mar. 3, 1851, s. 1, v. 9, p. 600; July 14, 1832, v. 4, p. 608; Dec. 15, 1877, s. 2, v. 20, p. 13; June 16, 1880, v. 21, p. 259. See Public Documents.

## TEMPORARY VACANCIES.

Sec.
177. Vacancies, how temporarily filled.
178. Vacancies in subordinate offices.
179. Discretionary authority of the President.
180. Temporary appointments limited to ten days.
181. Restriction on temporary appointments.
182. Extra compensation disallowed.

Title 4.

SEC. 177. In case of the death, resignation, absence, or sickness of the head of any Department, the first or sole assistant thereof shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such head until a successor is appointed, or such absence or sickness shall cease.

Vacancies, how temporarily filled. July 23, 1868, s. 1, v. 15, p. 168. See note 1.

SEC. 178. In case of the death, resignation, absence, or sickness of the chief of any Bureau, or of any officer thereof, whose appointment is not vested in the head of the Department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease.

Vacancies in subordinate offices. Idem, s. 2.

*Note 1.*—Under sections 177 to 180, a vacancy occasioned by the death or resignation of the head of a Department, or of a chief of a bureau therein, can be filled by appointment *ad interim* for a period of ten days only. The power is then exhausted. (Op. XVI, 596, Devens, Dec. 31, 1880.) The ten days is to be computed from the date of the President's action. (*Ibid*, 457.)

Discretionary authority of the President.
July 23, 1868, s. 3, v. 15, p. 168; June 22, 1870, s. 2, v. 16, p. 162.

SEC. 179. In any of the cases mentioned in the two preceding sections, except the death, resignation, absence, or sickness, of the Attorney-General, the President may, in his discretion, authorize and direct the head of any other Department or any other officer in either Department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.

Temporary appointments limited to *thirty* days.
July 23, 1868, s. 3, v. 15, p. 168.
Act of Feb. 6, 1891.
26 Stats., p. 733.

SEC. 180. A vacancy occasioned by death or resignation must not be temporarily filled under the three preceding sections for a longer period than *thirty* days.

Restriction on temporary appointments.
Idem, s. 2.

SEC. 181. No temporary appointment, designation, or assignment of one officer to perform the duties of another, in the cases covered by sections one hundred and seventy-seven and one hundred and seventy-eight, shall be made otherwise than as provided by those sections, except to fill a vacancy happening during a recess of the Senate.

Extra compensation disallowed.
Idem, s. 3.
See note 2.

SEC. 182. An officer performing the duties of another office, during a vacancy, as authorized by sections one hundred and seventy-seven, one hundred and seventy-eight, and one hundred and seventy-nine, is not by reason thereof entitled to any other compensation than that attached to his proper office.

## TENURE OF OFFICE, ETC.

Sec.
1760. Unauthorized office, no salary for.
1761. Appointees to fill vacancies during recess of Senate.
1762. Salaries to officers improperly holding over.
Act March 3, 1887. Repeal of tenure of office act.
1773. Commissions.
1774. Notification of appointments to Secretary of Treasury.
1775. Notification of nominations, rejections, etc., to Secretary of Treasury.
1786. Proceedings against persons illegally holding office.
1787. Penalty for illegally holding office.

Title 19.

Unauthorized office, no salary for.
Feb. 9, 1863, s. 2, v. 12, p. 646.

SEC. 1760. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.

No salaries to certain appointees to fill vacancies during recess of Senate.
Idem.

SEC. 1761. No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate, to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

Salaries to officers improperly holding over.

SEC. 1762. No money shall be paid or received from the Treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the Treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercis-

*Note 2.*—This provision (sec. 182) was designed to be general, and applies as well to those vacancies which are supplied by operation of the statute as to those which are filled by designation of the President. (Op., XIII, 7, Mar. 26, 1862, Hoar.)

ing the duties or functions of any office contrary to sections seventeen hundred and sixty-seven to seventeen hundred and seventy, inclusive; nor shall any claim, account, voucher, order, certificate, warrant, or other instrument providing for or relating to such payment, receipt, or retention, be presented, passed, allowed, approved, certified, or paid by any officer, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office, or the exercising or performing the functions or duties thereof. Every person who violates any of the provisions of this section shall be deemed guilty of a high misdemeanor, and shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both.

Mar. 2, 1867, s. 9, v. 14, p. 431; June 20, 1875, v. 18, p. 109.

See note 1.

That sections seventeen hundred and sixty-seven, seventeen hundred and sixty-eight, seventeen hundred and sixty-nine, seventeen hundred and seventy, seventeen hundred and seventy-one, and seventeen hundred and seventy-two of the Revised Statutes of the United States are hereby repealed.

March 3, 1887.

24 Stat. L., 500. Tenure of office, repeal of provisions relating to. Repeal of R. S., ss. 1767-1772.

SEC. 1773. The President is authorized to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointments have been advised and consented to by the Senate.

Commissions. Idem.

SEC. 1774. Whenever the President, without the advice and consent of the Senate, designates, authorizes, or employs any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof, and the Secretary of the Treasury shall thereupon communicate such notice to all the proper accounting and disbursing officers of his Department.

Notification of appointments to Secretary of Treasury. Idem, s. 8.

SEC. 1775. The Secretary of the Senate shall, at the close of each session thereof, deliver to the Secretary of the Treasury, and to each of the Assistant Secretaries of the Treasury, and to each of the Auditors, and to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all the persons who have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations have been made and not confirmed and filled at such session.

Notification of nominations, rejections, etc., to Secretary of Treasury. Idem, s. 7.

SEC. 1786. Whenever any person holds office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution, the district attorney for the district in which such person holds office shall proceed against him by writ of quo warranto, returnable to the circuit or district court of the United States in such district, and prosecute the same to the removal of such person from office.

Proceedings against persons illegally holding office. May 31, 1870, s. 14, v. 16, p. 143. See note 2.

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*Note 1.*—Sections 1767 to 1772, both inclusive, contained in the Hogg revision, defining the tenure of office, were repealed by act March 3, 1887, above.

*Note 2.*—No person * * * shall hold any office, civil or military, under the United States, who, having previously taken an oath * * * as an officer of the United States * * * to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability. (Sec. 3, Art. XIV, amendment to Constitution.)

See secs. 1786 and 1787.

Penalty for illegally holding office.
Idem, s. 15.
See note 3.

SEC. 1787. Every person who knowingly accepts or holds any office under the United States, or any State, to which he is ineligible under the third section of the fourteenth article of amendment of the Constitution, or who attempts to hold or exercise the duties of any such office, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than one year, or fined not more than one thousand dollars, or both.

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*Note 3.*—Functionaries of the Government in all of its Departments, civil or military, supreme or subordinate, general or provincial, political or municipal, are undoubtedly public officers. (Op., VIII, 107, Cushing, Sept. 30, 1856.)

No public officer has authority to enter into a submission on behalf of the United States which will be binding, unless the power be given by statute. (U. S. *v.* Ames, 1 Woodbury & Minot, p. 76, B. F. D.)

The acts of a public officer, on public matters within his jurisdiction and where he has a discretion, are presumed to be legal until the contrary be shown. (Miller *v.* Dinsman, 7 Howard, p. 89, B. F. D.)

Where a particular authority is confided to a public officer, to be exercised in his discretion, upon an examination of facts, of which he is the appropriate judge, his decision thereon, in the absence of any controlling provision, is absolutely final. (Allen *v.* Blunt, 3 Story's Reports, 742, B. F. D.)

The executive officers of the Government are personally liable at law for damages, in the ordinary form of action, for illegal official ministerial acts or omissions, to the injury of an individual. (Brightley Federal Digest, p. 597. *Cites authorities.*)

A public officer, sued for an illegal act, can not justify under the instructions of the head of an Executive Department.

An officer is responsible in damages for an illegal act done under instructions of a superior, but the Government is bound to indemnify him.

Where a statute imposes a particular duty upon an executive officer and he has acted (performed his duty according to the understanding of the statute), there is no appeal from his action to the President or to any other executive officer, unless such appeal is provided for by law. (Op., XVI, 317, Devens, May 2, 1879.)

Usages have been established in every Department of the Government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits. And no such change of usage can have a retrospective effect, but must be limited to the future. Usage can not alter the law, but it is evidence of the construction given to it, and must be considered binding on past transactions. (VII, Peters, 1-14, cited by Cushing; Op., VIII, 7.)

An Executive Department has no right to omit or delay the discharge of the duties imposed upon it by law, at the request of a committee of a House of Congress; it can only pay attention to such a request when it affects a discretionary power. (Op., XIII, 113, Hoar, June 22, 1869.)

No process issued under the authority of a State government can obstruct, directly, or indirectly, the operations of the Government of the United States. (Op., XV, 524.)

Where an officer of the United States is acting for the Government in any transaction, the benefits of which are to the Government, or where the end is to protect the interests of the Government, there seems to be good ground why the Government should interpose and assume his defense in case he is sued on account of such proceedings. (Op., XIV, 189, Williams, 20 Feb., 1873.)

The orders of the head of an Executive Department, in reference to matters within its general supervision and control, are in contemplation of law those of the President, and have the same binding effect. (Otto, 101, p. 755; Wolsey *v.* Chapman, see 13 Peters, 498; Wilcox *v.* Jackson; also Op., IX, 463, and XI, 400.)

It is a settled rule of administrative practice that the official acts of a previous administration are to be considered by its successors as final so far as the Executive is concerned. (Op., XV, 208.) The Secretary of the Interior should not review the decision of his predecessor, no new facts having been presented. Principal of *res adjudicata* applies. (Op., XV, 315, Devens; see also Op., VIII, 214, and V, 29.) The well-considered decision of the head of a Department ought only to be reversed upon clear evidence of mistake or wrong. (Op., X, 63.)

Congress, in case of appointments, may provide that certain acts shall be done by the appointee before he shall enter on the possession of his office under his appointment. These acts then become conditions precedent to the complete investure of the office. (U. S. *v.* LeBaron, 19 Howard, 78.)

In a matter which the law confides to the pure discretion of the Executive, the decision by the President or the proper head of the Department, of any question of fact involved, is conclusive and is not subject to revision by any authority in the United States. (Op., VI, 226, Cushing, Nov. 23, 1853.)

The lawful will of the President may be announced and an act in the authority of the President be performed, not only by a head of a Department, but in the second or other degree of delegation by some officer subordinate to such head. (Op., VII, 453, Cushing, Aug. 31, 1855. See this opinion for a full discussion of the relation of the President to the Executive Departments.)

A public officer is not liable to an action for an honest mistake made in a matter where he was obliged to exercise his judgment, though an individual may thereby suffer. (Kendall *v.* Stokes, 3 Howard, 87. B. F. D.)

The power of pardon, conferred by the Constitution on the President, is unlimited except in case of impeachment. It extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency, or after conviction and judgment. The power is not subject to legislative control. A pardon reaches the punishment prescribed for the offense and the guilt of the offender. If granted before conviction it pre-

## CLAIMS AND CLAIM AGENTS.

Sec.
184. Subpœnas to witnesses on claims pending.
185. Fees of witnesses.
186. Compelling testimony.
187. Professional assistance, how obtained.
190. Former employés acting as counsel.
236. Public accounts to be settled in the Treasury.
3469. Compromise of claims.
3477. Assignment of claims void, unless, etc.
Sec.
3478. Oath by persons prosecuting claims.
3479. Who may administer oath.
3480. Claims of disloyalists.
5454. Unlawful taking papers relating to claims.
5498. Officers, etc., interested in claims.
Act Mar. 3, 1875. Deductions of debts due United States.
—— Claims against exhausted appropriations.
—— Claims based on fraud.

Title 4.

Subpœnas to witnesses. Feb. 14, 1871, s. 1, v. 16, p. 412. See note 1.

SEC. 184. Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpœna for a witness being within the jurisdiction of such court, to appear at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim.

Witnesses' fees. Feb. 14, 1871, s. 1, v. 16, p. 412. See note 2.

SEC. 185. Witnesses subpœnaed pursuant to the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States.

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vents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction it removes the penalties and disabilities, and restores him to all his civil rights. It gives him a new credit and capacity. There is only this limitation to its operation—it does not restore offices forfeited or property or interests vested in others in consequence of the conviction and judgment. (S. C., Wallace, 4, p. 334, Dec., 1866.)

Fines and penalties, where they have not been actually covered into the Treasury, are restorable under a full pardon. (Op., XVI, p. 3, Apr. 29, 1878, Devens. See also Op., XIV, June 28, 1872, Williams; XII, 81, Stanbery; VIII, p. 281, Cushing; Holt's Digest, p. 261.)

The pardon of a deceased officer or soldier is impracticable for the reason that it is essential to the validity of a pardon that it should be accepted. A pardon, like a deed, must be delivered to and accepted by the party to whom it is granted in order to be valid. (Holt's Digest, p. 262, cites U. S. *v.* Wilson, 7 Peters, 150.)

A remission of the penalty by a pardon by the President will restore an officer whose rank has been reduced by sentence of a court-martial to his former relative rank according to the date of his commission. [Case of an officer reduced in rank by having his name placed lower down on the list of officers of the same grade. The officer loses such opportunities for promotion as may in the meantime have occurred.] (Op., XII, p. 547, Jan. 22, 1869, Evarts.)

The pardoning power of the President can not reach an *executed sentence* which has been regularly imposed by a competent court. When a sentence has been executed in part he can remit the remainder. (Holt's Digest, p. 260.)

For a statement of the principal grounds on which the Judge-Advocate-General of the Army has favored pardon or remission of the unexpired punishments of *soldiers*, see Winthrop's Digest, pages 359–360.

An application for a pardon was addressed to the President and referred to the War Department. The latter asked the opinion of the Attorney-General on the subject, who declined to give it, as it would only be advising the Secretary of War what to advise the President. (Op., XIV, p. 20, Mar. 23, 1872, Williams.)

The general power of pardoning by the President includes the power of pardoning conditionally, or of commuting to a milder punishment that which has been adjudged against the offender. The commutation of the President is but a conditional pardon, and that the President may grant such a conditional pardon has been always recognized and decided. (Op., V, 368, May 10, 1851, Crittenden, cites U. S. *v.* Wilson 7 Peters, 158.)

*Note 1.*—Where the law imposes on officers the examination and settlement of claims, it gives them the authority to require that the claim shall be established, or supported at least, by oaths of witnesses. (Op., XIV, Williams, July 23, 1874.)

*Note 2.*—Under sec. 848, R. S., for each day's attendance in court or before any officer, pursuant to law, a witness is allowed one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When subpœnaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation for attendance shall be allowed. (See sec. 850, Traveling Expenses, Division I.)

Compelling testimony. Idem.

SEC. 186. If any witness, after being duly served with such subpœna, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpœna issued may proceed, upon proper process, to enforce obedience to the subpœna, or to punish the disobedience, in like manner as any court of the United States may do in case of process of subpœna ad testificandum issued by such court.

Professional assistance; how obtained. Idem, s. 3.

SEC. 187. Whenever any head of a Department or Bureau having made application pursuant to section one hundred and eighty-four, for a subpœna to procure the attendance of a witness to be examined, is of opinion that the interests of the United States require the attendance of counsel at the examination, or require legal investigation of any claim pending in his Department or Bureau, he shall give notice thereof to the Attorney-General, and of all facts necessary to enable the Attorney-General to furnish proper professional service in attending such examination, or making such investigation, and it shall be the duty of the Attorney-General to provide for such service.

Persons formerly in the Departments not to prosecute claims in them. June 1, 1872, s. 5, v. 17, p. 202. See note 3.

SEC. 190. It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employé in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employé, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employé.

Title 7, chap. 1. Mar. 3, 1817, s. 2, v. 3, p. 366. See note 4.

SEC. 236. All claims and demands whatever by the United States, or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.

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*Note 3.*—By the act of July 11, 1861, a member of Congress elect is, previous to as well as after taking the oath of office, debarred from acting as counsel for parties, and from prosecuting claims against the Government before any Department, court-martial, bureau, office, or any civil, naval, or military commission, if he has received, or has agreed to receive any compensation whatever, directly or indirectly, therefor. (Op., XIV, 133, Williams, Nov. 2, 1872.)

*Note 4.*—Services voluntarily rendered, however valuable, and however strongly they may appeal to the liberality and equity of the Government, can not be said to give the party who renders them a legal right to compensation. The person must have been duly appointed to some office, or duly employed in some duty recognized by law. (Op., III, 357, Butler, Aug. 13, 1838.)

Services voluntarily performed without contract for compensation create no legal liability. (C. C., XIII.)

An agent who received payment on a claim in good faith and paid it over to his principal before informed of a mistake made, is not liable. The principal is liable either at the suit of the rightful claimant or of the United States. The officer of the Treasury who made the mistake is legally chargeable with the amount, to be passed to his credit on recovering the money. The rightful owner does not lose his right to be paid out of any money in the Treasury not otherwise appropriated, as the law authorized. (Op., XVI, 193, Devens, Oct. 23, 1878; see also Op., IV, 298, 307; V, 183.)

Claims against the Government which are disputed by the officers authorized to adjust such accounts may be compromised. If the claimant voluntarily enters into such a compromise, accepting a smaller sum than his demand and giving a receipt in full for the whole, he is bound by the adjustment. (C. C., v. 8, p. 134, Sweeney's Case.)

Where Congress appropriated a certain sum to pay a claimant, and the head of a Department found a less sum due and paid the latter, the appropriation was exhausted when the amount awarded was paid. A succeeding Secretary has no jurisdiction to award claimant an additional sum. (Op., IX, 451, Black, July 20, 1860; see also Op., X, 238, Bates, Apr. 29, 1862.)

If funds to pay a claim are sent at request of claimant, by express, the claim is

Title 36.

Compromise. Mar. 3, 1863, s. 10, v. 12, p. 740. See note 5.

SEC. 3469. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

Title 36.

Assignments of claims void, unless, etc. July 29, 1846, v. 9, p. 41; Feb. 26, 1853, s. 1, v. 10, p. 170. See note 6.

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

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thereby discharged, whether the funds were received or not. If sent by draft, at his request, claim subsists, unless draft has been paid [to proper party]. A disbursing agent remitting funds due claimant, to his attorney, under instructions from the attorney, given without the knowledge or consent of the claimant, which were not paid over, would be liable to the Government and the Government to the claimant. (Op., XIV, 485. Williams, Oct. 29, 1874.)

Where Congress directs the "adjustment and settlement" of a claim "according to the rules and regulations heretofore adopted by the United States in the settlement of like cases," and it appears that Congress has generally given interest in like cases, it will be allowed. (C. C., X, p. 231. Affirmed by Supreme Court.)

It is a general rule, founded upon sound principles and uniformly adhered to in the administration of the Government, that the Executive Departments neither allow nor charge interest to parties in account with the United States, excepting by virtue of express agreement or in pursuance of some special provision of law. (Holt's Digest, p. 204.)

Interest can not be allowed except "upon a contract expressly stipulating for the payment of interest." (C. C., I, p. 220.) As to interest, see Op., IV, 14, 79, 136; V, 105, 138.

*Note 5.*—Under section 3469, the Solicitor of the Treasury may properly recommend the acceptance of a compromise offered in discharge of a claim of the United States before payment, where the district attorney advises acceptance upon the ground that, from want of evidence to establish the facts on which a verdict must depend, he doubts his ability to obtain a judgment, even though the defendant is able to pay the amount of the claim. (Op., XVI, 259, Devens, Jan. 30, 1879.)

This section was intended to provide for compromising claims in favor of the United States which are of a personal character; does not extend to claims to real property to which the United States asserts ownership and has a record title. (Op., XVI, 385, Devens, Oct. 1, 1879.)

It does not confer upon the Solicitor of the Treasury a discretion to recommend for compromise cases in which the claim is entirely solvent, but where circumstances of hardship, etc., exist. (Op., XVI, 617, Phillips, Jan. 8, 1879.)

*Note 6.*—Though the assignment of a claim against the Government be void under section 3477, Revised Statutes, yet if the Treasury recognizes the assignment and pays the amount found due on an accounting to the assignee, an action will not lie to recover it back. (C. C., XIII, 292.) [See in this opinion a statement as to the manner in which accounts and claims against the Government are settled by the accounting officers.]

This section, 3477, not only extends to claims which are to be paid by Treasury warrants, but extends to those which relate to claims otherwise payable. (Op., XVI, 261, Devens, Feb. 7, 1879.)

A power of attorney for the collection of a claim against the Government, not

Oath by persons prosecuting claims.
July 17, 1862, s. 1, v. 12, p. 610.

SEC. 3478. Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or Bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service.

Who may administer the oath.
Idem, s. 2.
See note 7.

SEC. 3479. The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered.

Claims of disloyalists.
Mar. 2, 1867, Res. 46, v. 14, p. 571.
See note 8.
See act of Mar. 3, 1877, c. 105, p. 362, v. 19, as to payment to mail contractors.

SEC. 3480. It shall be unlawful for any officer to pay any account, claim, or demand against the United States which accrued or existed prior to the thirteenth day of April, eighteen hundred and sixty-one, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who during such rebellion was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand, until this section is modified or repealed. But this section shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned prior to the first day of April, eighteen hundred and sixty-one, to the creditors of such contractors, loyal citizens of loyal States, in payment of debts incurred prior to the first day of March, eighteen hundred and sixty-one.

Title 70, chap. 5.

Unlawfully taking or using papers relating to claims.

SEC. 5454. Every person who takes and carries away, without authority from the United States, from the place where it had been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of

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executed in the presence of "two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof," is void under the act of February 26, 1853. (C. C., V, 362; see also Op., IX, 188.)

The revocation of a power of attorney can only be affected by notice to the agent. Notice to a third party, without notice to the agent, leaves the power in force. (C. C., VII, 535.)

A power of attorney not given on account of any valuable consideration paid to the principal may be revoked before the exercise of authority under it. (Op., IX, 128.)

Where a letter of attorney forms part of a contract, and is security for money, or for the performance of any act which is deemed valuable, it is generally made irrevocable in terms, or, if not so, it is deemed irrevocable in law. If a power of attorney be coupled with an "*interest*" it survives the person giving it and may be executed after his death. (VIII Wheaton, 203; see Op., VII, 35.)

A naked power of attorney is revokable at the will of him who gave it, although the writing should say it was irrevocable. (Op., VII, 38.)

See Op., XI, 7, where it was held that, although an agent, under a power to prosecute, demand, recover, and receive a claim, did prosecute it to the award, and another was appointed to collect, the installment could be paid to the latter—the power of the former not having been coupled with an interest.

*Note 7.*—It is competent to the head of a Department, as a measure for the protection of the public interests committed to his charge, to decline to recognize, or to suspend, the transaction of business with an agent or attorney for frauds and fraudulent practices attempted or committed by him in the prosecution of claims before the Department, and whose character is such that a reasonable degree of confidence can not be placed in his integrity and honesty in dealing with the Government. (Op., XIII, 150, Hoar, Oct. 4, 1869.)

*Note 8.*—This section applies only to claims that accrued or existed prior to April 13, 1861. It does not apply to claims in favor of corporations aggregate. (Op., XIII, 398, Mar. 29, 1871, Akerman.)

This section created a personal disability only, which could not operate against the heirs of parties thus disqualified. (Winthrop's Digest, p. 168.)

Applicable to claims for bounty land. (Op., XV, p. 450.)

the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid, or who presents or uses or attempts to use any such document, record, file, or paper so taken and carried away in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be imprisoned at hard labor not more than ten years, or fined not more than five thousand dollars.

Feb. 5, 1867. s. 6. v. 14, p. 384.

SEC. 5498. Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.

Title 70, chap. 6.

Officers, etc., interested in claims.

Feb. 26, 1853, s. 2, v. 10, p. 170.

See under Bribes, etc., Division IV.

That when any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final

Mar. 3, 1875.

Amount of debt due U. S. to be withheld in paying judgments, etc.

Secretary to execute discharge, when.

Additional amount to be withheld.

Duty of Secretary to sue on debt.

judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with six per cent. interest thereon for the time it has been withheld from the plaintiff.

Balance, how paid to claimant. Mar. 3, 1875, v. 18, p. 481.

Apr. 30, 1878.

Certain claims not to be allowed. Apr. 30, 1878, s. 2, v. 20, p. 524. See note 1.

No claim shall hereafter be allowed by the accounting officers, under the provisions of the act of Congress, approved June 16, 1874, or by the Court of Claims, or by Congress, to any person, where such claimant, or those under whom he claims, shall wilfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect to such claim, or presented any false evidence to Congress, or to any Department or court, in support thereof.

## COURT OF CLAIMS.


Sec.
188. Evidence to be furnished by the Departments.
1059. Jurisdiction.
1060. Private claims in Congress, when transmitted to Court of Claims.
1061. Judgment for set-off or counter-claim, how enforced.
1062. Decree on account of paymasters, etc.
1063. Claims referred by Departments.
1064. Procedure in cases transmitted by Departments.
1065. Judgments in cases transmitted by Departments, how paid.
1067. Claims pending in other courts not to be prosecuted in Court of Claims.
1069. Limitation.
1072. Petition.
1073. Petition dismissed if issue found against claimant as to allegiance, etc.
1074. Burden of proof and evidence as to loyalty.
1076. Power to call upon Departments for information.
1086. Claims forfeited for fraud.
1087. New trial on motion of claimant.
1088. New trial on motion of United States.
1089. Payment of judgments.
1090. Interest.
1091. Interest on claims.
1092. Payment of judgment a full discharge, etc.
1093. Final judgments a bar.
Act Mar. 3, 1877. Cost of record taxed against losing party.
Act Apr. 30, 1878. Fraudulently claiming more than is due.
Act Mar. 3, 1883. Act to relieve Congress and Departments in investigation of claims.


Title 4.

Evidence to be furnished by the Departments in suits pending in the Court of Claims. June 25, 1868, s. 6, v. 15, p. 76. See note 2.

SEC. 188. In all suits brought against the United States in the Court of Claims founded upon any contract, agreement, or transaction with any Department, or any Bureau, officer, or agent of a Department, or where the matter or thing on which the claim is based has been passed upon and decided by any Department, Bureau, or officer authorized to adjust it, the Attorney-General shall transmit to such Department, Bureau, or officer, a printed copy of the petition filed by the claimant, with a request that the Department, Bureau, or officer, shall furnish to the Attorney-General all facts, circumstances, and evidence touching the claim in the possession or knowledge of the Department, Bureau, or officer. Such Department, Bureau, or officer shall, without delay, and within a reasonable time, furnish

Retired officers not to act as counsel. This applies to naval retired officers.

*Note 1.*—A retired officer of the Army is an "officer of the United States" within the meaning of R. S., sec. 5498, which prohibits, under penalty of fine or imprisonment, or both, every such officer from acting as an agent or attorney for prosecuting any claim against the United States, &c. To appear and argue a case for a claimant would be to support a claim against the United States, and would subject the officer to penalty prescribed by statute.

*Note 2.*—The head of a Department is not at liberty to furnish to the Court of Claims, on a call from that court, information or papers, when to do so would, in his opinion, be injurious to the public interest. A return setting forth such opinion would in all cases be a sufficient answer to the rule. (Op., XIII, 539, Akerman, Nov. 24, 1871.)

the Attorney-General with a full statement, in writing, of all such facts, information, and proofs. The statement shall contain a reference to or description of all such official documents or papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the Department, office, or place where the same is kept or may be procured. If the claim has been passed upon and decided by the Department, Bureau, or officer, the statement shall succinctly state the reasons and principles upon which such decision was based. In all cases where such decision was founded upon any act of Congress, or upon any section or clause of such act, the same shall be cited specifically; and if any previous interpretation or construction has been given to such act, section, or clause by the Department, Bureau, or officer, the same shall be set forth succinctly in the statement, and a copy of the opinion filed, if any, shall be annexed to it. Where any decision in the case has been based upon any regulation of a Department, or where such regulation has, in the opinion of the Department, Bureau, or officer transmitting such statement, any bearing upon the claim in suit, the same shall be distinctly quoted at length in the statement. But where more than one case, or a class of cases, is pending, the defense to which rests upon the same facts, circumstances, and proofs, the Department, Bureau, or officer shall only be required to certify and transmit one statement of the same, and such statement shall be held to apply to all such cases, as if made out, certified, and transmitted in each case respectively.

Title 13, chap. 21.

Jurisdiction.

SEC. 1059. The Court of Claims shall have jurisdiction to hear and determine the following matters:

Claims founded on statutes or contracts, or referred by Congress. Feb. 24, 1855, s. 1, v. 10, p. 612; Mar. 3, 1875, v. 18, p. 481; June 22, 1874, s. 2, v. 18, p. 192.

First. All claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, and all claims which may be referred to it by either House of Congress.

Set-offs and counterclaims of United States. Mar. 3, 1863, s. 3, v. 12, p. 765.

Second. All set offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government of the United States against any person making claim against the Government in said court.

Disbursing officers. May 9, 1866, s. 1, v. 14, p. 44.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

Claims for captured and abandoned property. Mar. 12, 1863, s. 3, v. 12, p. 820; July 2, 1864, ss. 2, 3, v. 13, p. 13; July 27, 1868, s. 3, v. 15, p. 243; Feb. 18, 1875, v. 18, p. 318.

Fourth. Of all claims for the proceeds of captured or abandoned property, as provided by the act of March 12, eighteen hundred and sixty-three, chapter one hundred and twenty, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," or by the act of July 2, eighteen hundred and sixty-four, chap-

See sec. 3, act of Mar. 3, 1883.

ter two hundred and twenty-five, being an act in addition thereto: *Provided*, That the remedy given in cases of seizure under the said acts, by preferring claim in the Court of Claims, shall be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property in virtue or under color of said acts from suit at common law, or any other mode of redress whatever, before any court other than said Court of Claims: *Provided also*, That the jurisdiction of the Court of Claims shall not extend to any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the Army or Navy engaged in the suppression of the rebellion.

Private claims in Congress, when transmitted to Court of Claims.
Mar. 3, 1863, s. 2, v. 12, p. 765.

SEC. 1060. All petitions and bills praying or providing for the satisfaction of private claims against the Government, founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, shall, unless otherwise ordered by resolution of the House in which they are introduced, be transmitted by the Secretary of the Senate or the Clerk of the House of Representatives, with all the accompanying documents, to the Court of Claims.

Judgments for set-off or counter-claim, how enforced.
Idem, s. 3.
See Mar. 3, 1875, Claims as to set-offs.

SEC. 1061. Upon the trial of any cause in which any set-off, counter-claim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government, it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district or circuit court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such courts are enforced.

Decree on accounts of paymasters, &c.
May 9, 1866, s. 2, v. 14, p. 44.

SEC. 1062. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed, as a credit in the settlement of his accounts.

Claims referred by Departments.
June 25, 1868, s. 7, v. 15, p. 76.
See note 1.

SEC. 1063. Whenever any claim is made against any Executive Department, involving disputed facts or controverted questions of law, where the amount in contro-

*Note 1.*—The head of a Department may refer a claim direct to the Court of Claims, and he does not waive his right to send a claim there by allowing it in the first instance to be passed upon by the accounting officers of the Treasury. (C. C., V, p. 64.)

The head of a Department may transmit a claim to the Court of Claims under section 1063, R. S., after the Auditor and Comptroller of the Treasury have settled it and certified a balance due the claimant. (C. C., XII, 319.)

The head of an Executive Department can not transmit a claim to the Court of Claims under section 1063, on the ground that it involves disputed facts or controverted questions of law, if he is forbidden by law to pay the claim. (C. C., XV, 414.)

versy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States, the head of such Department may cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant; and the Secretary of the Treasury may, upon the certificate of any Auditor or Comptroller of the Treasury, direct any account, matter, or claim, of the character, amount, or class described in this section, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court, for trial and adjudication: *Provided*, That no case shall be referred by any head of a Department unless it belongs to one of the several classes of cases which, by reason of the subject-matter and character, the said court might, under existing laws, take jurisdiction of on such voluntary action of the claimant.

See act Mar. 3, 1883.

SEC. 1064. All cases transmitted by the head of any Department, or upon the certificate of any Auditor or Comptroller, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.

Procedure in cases transmitted by Departments. June 25, 1868, s. 7, v. 15, p. 76.

SEC. 1065. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Judgments in cases transmitted by Departments, how paid. Idem, and Mar. 3, 1875, v. 18, p. 481.

SEC. 1067. No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect of which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Claims pending in other courts not to be prosecuted in Court of Claims. June 25, 1868, s. 8, v. 15, p. 677.

SEC. 1069. Every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women first accrued during marriage, of persons under the age of

Limitation. Mar. 3, 1863, s. 10, v. 12, p. 767. See note 1.

*Note 1.*—The statute of limitations prescribed by the amended Court of Claims act (Mar. 13, 1863, 12 Stat. L., 765, § 10) does not extend to claims in the Executive Departments. (C. C., XIV, 149.)

twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Petition. Feb. 24, 1855, s. 1, v. 10, p. 612; Mar. 3, 1863, s. 12, v. 12, p. 767.

SEC. 1072. The claimant shall, in all cases, fully set forth in his petition the claim, the action thereon in Congress, or by any of the Departments, if such action has been had; what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim, or of any part thereof or interest therein, has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; that the claimant, and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. And the said petition shall be verified by the affidavit of the claimant, his agent, or attorney.

Petition dismissed, if issue found against claimant as to allegiance, etc. Mar. 3, 1863, s. 12, v. 12, p. 767.

SEC. 1073. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Burden of proof and evidence as to loyalty. June 25, 1868, s. 3, v. 15, p. 75.

SEC. 1074. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant asserting the loyalty of any such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be prima-facie evidence that such person did give aid and comfort to said rebellion and to the persons engaged therein.

Power to call upon Departments for information. Feb. 24, 1855, s. 11, v. 10, p. 614.

SEC. 1076. The said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any Department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

SEC. 1086. Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or of any part of any claim against the United States, shall ipso facto forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

Claims forfeited for fraud. Mar. 3, 1863, s. 11, v. 12, p. 767. See act of Apr. 30, 1878.

SEC. 1087. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

New trial on motion of claimant. Feb. 24, 1855, s. 9, v. 10, p. 614.

SEC. 1088. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

New trial on motion of United States. June 25, 1868, s. 2, v. 15, p. 75.

SEC. 1089. In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court.

Payment of judgments. Mar. 3, 1863, s. 7, v. 12, p. 766; Mar. 3, 1875, v. 18, p. 481. See March 3, 1875, under Claims.

SEC. 1090. In cases where the judgment appealed from is in favor of the claimant, and the same is affirmed by the Supreme Court, interest thereon at the rate of five per centum shall be allowed from the date of its presentation to the Secretary of the Treasury for payment as aforesaid, but no interest shall be allowed subsequent to the affirmance, unless presented for payment to the Secretary of the Treasury as aforesaid.

Interest. Mar. 3, 1863, s. 7, v. 12, p. 766.

SEC. 1091. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Interest claims. Idem.

SEC. 1092. The payment of the amount due by any judgment of the Court of Claims and of any interest thereon allowed by law, as hereinbefore provided, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

Payment of judgment a full discharge, etc. Idem.

SEC. 1093. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United

Final judgments a bar. Idem.

States arising out of the matters involved in the controversy.

Mar. 3, 1877.

Cost of printing record to be taxed against losing party.

Mar. 3, 1877, ch. 105, s. 1, v. 19, p. 344.

There shall be taxed against the losing party in each and every cause pending in the Supreme Court of the United States or in the Court of Claims of the United States, the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerks of said courts, respectively, and paid into the Treasury of the United States.

Apr. 30, 1878.

Claims not to be allowed where more is fraudulently claimed than is due.

Apr. 30, 1878, ch. 77, s. 2, v. 20, p. 524.

No claim shall hereafter be allowed * * * by the Court of Claims * * * to any person, where such claimant, or those under whom he claims, shall wilfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim or presented any false evidence to Congress, or to any Department or court, in support thereof.

Mar. 3, 1883.

Stat. L., 1881-1883, v. 22.

Reference of claims pending before Congress.

That whenever a claim or matter is pending before any committee of the Senate or House of Representatives, or before either House of Congress, which involves the investigation and determination of facts, the committee or house may cause the same, with the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims of the United States, and the same shall there be proceeded in under such rules as the court may adopt. When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the house by which the case was transmitted for its consideration.

Reference of claims pending with Executive Departments.

SEC. 2. That when a claim or matter is pending in any of the Executive Departments which may involve controverted questions of fact or law, the head of such Department may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the Department by which it was transmitted for its guidance and action.

Claims not within the jurisdiction of the court.

SEC. 3. The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States in the operations of said forces during the said war at the seat of war; nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States.

Claims for supplies, etc., furnished for the suppression of the rebellion.

SEC. 4. In any case of a claim for supplies or stores taken by or furnished to any part of military or naval forces of the United States for their use during the late war for the suppression of the rebellion, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any

aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

Defense, etc., for the United States.

SEC. 5. That the Attorney-General, or his assistants, under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under this act, with the same power to interpose counter-claims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is now required to defend the United States in said court.

Parties in interest may testify.

SEC. 6. That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same.

Continuation of reports. Mar. 3, 1883, chap. 116.

SEC. 7. That reports of the Court of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

## CONTINGENT FUNDS.

Sec.
192 and 1779. Expenditure for newspapers, periodicals, etc.
193. Annual report of expenditure.
430. Estimates for contingent expenses.
1780. Failure to make report.
3676. How controlled, etc.
3682. Restrictions on contingent appropriations.
3683. Purchases from contingent fund restricted.
— Statement to be made to Congress.
— Not to be used to pay salaries.

Title 4.

Expenditure for newspapers. Aug. 26, 1842, s. 16, v. 5, p. 526.

SEC. 192. The amount expended in any one year for newspapers, for any Department, except the Department of State, including all the Bureaus and offices connected therewith, shall not exceed one hundred dollars. And all newspapers purchased with the public money for the use of either of the Departments must be preserved as files for such Department.

Title 19.

Expenditure for newspapers. Mar. 3, 1839, s. 3, v. 5, p. 349.

SEC. 1779. No executive officer, other than the heads of Departments, shall apply more than thirty dollars, annually, out of the contingent fund under his control, to pay for newspapers, pamphlets, periodicals, or other books or prints not necessary for the business of his office.

Annual report of expenditure of contingent funds. Aug. 26, 1842, s. 20, v. 5, p. 527. See June 20, 1874.

SEC. 193. The head of each Department shall make an annual report to Congress, giving a detailed statement of the manner in which the contingent fund for his Department, and for the Bureaus and offices therein, has been expended, giving the names of every person to whom any portion thereof has been paid; and if for anything furnished, the quantity and price; and if for any service rendered, the nature of such service, and the time employed, and the particular occasion or cause, in brief, that rendered such service necessary; and the amount of all former appropria-

tions in each case on hand, either in the Treasury or in the hands of any disbursing officer or agent. And he shall require of the disbursing officers, acting under his direction and authority, the return of precise and analytical statements and receipts for all the moneys which may have been from time to time during the next preceding year expended by them, and shall communicate the results of such returns and the sums total, annually, to Congress.

Title 10.

Estimates for expenses.
July 5, 1862, s. 5, v. 12, p. 511.
See sec. 3666, Appropriations.

SEC. 430. All estimates for * * * contingent expenses of the Department, and of the several Bureaus, shall be furnished to the Secretary of the Navy by the chiefs of the respective Bureaus.

Failure to make returns or reports.
July 18, 1866, s. 42, v. 14, p. 188.

SEC. 1780. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars and not less than one hundred.

Title 41.

Appropriations controlled by Secretary: each bureau to be kept separate.
July 5, 1862, s. 5, v. 12, p. 511.

SEC. 3676. All appropriations for * * * contingent expenses for the Navy Department shall be under the control and expended by the direction of the Secretary of the Navy, and the appropriation for each Bureau shall be kept separate in the Treasury.

Restrictions on contingent, etc., appropriations.
July 12, 1870, s. 3, v. 16, p. 250.
See Aug. 7, 1882.

SEC. 3682. No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation.

Purchases from contingent funds restricted.
Aug. 26, 1842, s. 19, v. 5, p. 527.
See note 1.

SEC. 3683. No part of the contingent fund appropriated to any Department, Bureau, or office, shall be applied to the purchase of any articles except such as the head of the Department shall deem necessary and proper to carry on the business of the Department, Bureau, or office, and shall, by written order, direct to be procured.

June 20, 1874.

Statement of expenditures to be reported at beginning of session.
Appropriation acts, v. 18, p. 355; v. 19, p. 156-306; June 20, 1874, v. 18, p. 85, and subsequent acts.
See note 2.

Hereafter a detailed statement of the expenditure for the preceding fiscal year of all sums appropriated for contingent expenses in any Department or Bureau of the Government, shall be presented to Congress at the beginning of each regular session.

Aug. 7, 1882.

Contingent fund not to be used to pay clerks, etc.

And no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employé shall hereafter be employed at the seat of government in any executive department or subordinate

*Note 1.*—The naval appropriation act of August 5, 1882, forbids paying from the contingent fund of the Navy for personal services in the Navy Department or any of its subordinate bureaus or offices in the District of Columbia.

*Note 2.*—The Secretary of the Navy can draw on the contingent fund for purposes of a contingent character—that is, such as might or might not happen, and which Congress could not easily foresee, and therefore could not provide for definitely. (Op., I, 302, Wirt.)

The words "contingent expenses," as used in the appropriation acts, mean such incidental, casual expenses as are necessary, or at least appropriate and convenient, in order to the performance of the duties *required by law* of the Department or the office for which the appropriation is made. (Op., XVI, 412, Devens, Dec. 19, 1879.)

bureau or office thereof, or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services. * * *

## DEBTS DUE BY OR TO THE UNITED STATES.

Sec.
3466. Priority established.
3467. Liability of executors.
3468. Priority of sureties.
3469. Compromises.
3470. Purchase on execution.
Act Mar. 3, 1875. Deduction of debts due from judgments.

Title 36.

Priority established.

Mar. 3, 1797, s. 5, v. 1, p. 515; Mar. 2, 1799, s. 65, v. 1, p. 676.

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Liability of executors, etc.

Mar. 2, 1799, s. 65, v. 1, p. 676.

SEC. 3467. Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

Priority of sureties.

Ibid.

SEC. 3468. Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon.

Compromise.

Op., XIII, 480; XVI, 250, 259.

Mar. 3, 1863, s. 10, v. 12, p. 740.

SEC. 3469. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accord-

ingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

Purchase on execution. May 26, 1824, s. 2, v. 4, p. 51.

SEC. 3470. At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States.

Mar. 3, 1875.

Amount of debt due U. S. to be withheld by Secretary of Treasury in paying judgments, etc., of debtor against U. S.

That when any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States.

Secretary to execute discharge, when.

But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment.

Proceedings when claimant denies debt.

And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch.

Balance, how paid when claimant obtains judgment against U. S.

Mar. 3, 1875, v. 18, p. 481. See note 1.

And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with six per cent. interest thereon for the time it has been withheld from the plaintiff.

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*Note 1.*—Security for a debt is not payment. The Fourth Auditor is not authorized to consider security offered for a debt due the United States, however ample it may be, a payment of a debt. (Op., I, p. 593, Wirt, Jan. 24, 1823.)

## DISBURSING OFFICERS AND AGENTS.

Sec.
285. Disbursements by order of commanding officer.
957. Suits against delinquents.
1389. Paymasters not to loan.
1550. Disbursing agents on foreign stations.
1563. Advances on distant stations.
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5497. Unlawfully receiving, etc., to be embezzlement.
Act Feb. 3, 1879.—Embezzlement by internal-revenue officers, etc., penalty.

SEC. 285. Every disbursement of public moneys, or disposal of public stores, made by a disbursing officer pursuant to an order of any commanding officer of the Navy, shall be allowed by the proper accounting officers of the Treasury, in the settlement of the accounts of the officer, upon satisfactory evidence of the making of such order, and of the payment of money or disposal of stores in conformity with it; and the commanding officer by whose order such disbursement or disposal was made, shall be held accountable for the same.

Title 7, chap. 4.

Disbursements, etc., by order of commanding officer of Navy.

Mar. 3, 1849, res. 2, v. 9, p. 419.

SEC. 957. When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court, (the United States attorney being present,) makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the accounting officers of the Treasury, and rejected; specifying in the affidavit each particular claim so rejected, and that he cannot then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads non est factum, or makes a motion to the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit. And no continuance shall be granted except as herein provided.

Title 13, chap. 18.

Delinquents for public money; judgment at return term, unless, etc.

Mar. 3, 1797, s. 3, v. 1, p. 514.

See sec. 3624.

SEC. 1389. It shall not be lawful for any paymaster, passed assistant paymaster, or assistant paymaster, to advance or loan, under any pretense whatever, to any officer in the naval service, any sum of money, public or private, or any credit, or any article or commodity whatever.

Title 15, chap. 1

Loans to officers by paymasters.

Aug. 26, 1842, s. 6, v. 5, p. 536; June 22, 1860, s. 3, v. 12, p. 83.

Title 15, chap. 7.

Disbursements on foreign stations.
June 17, 1844, s. 4, v. 5, p. 703.

SEC. 1550. No person shall be employed or continued abroad, to receive and pay money for the use of the naval service on foreign stations, whether under contract or otherwise, who has not been, or shall not be, appointed by and with the advice and consent of the Senate.

Title 15, chap. 8.

Advances to persons on distant stations.
Jan. 31, 1823, s. 1, v. 3, p. 723.
See sec. 3648.

SEC. 1563. The President of the United States may direct such advances, as he may deem necessary and proper, to such persons in the naval service as may be employed on distant stations where the discharge of the pay and emoluments to which they are entitled cannot be regularly effected.

Title 19.

Officers in arrears.
Jan. 25, 1828, v. 4, p. 246; May 20, 1836, v. 5, p. 31.
See note 1.

SEC. 1766. No money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.

Disbursing officers forbidden to trade in public funds or property.
Sept. 2, 1789, s. 8, v. 1, p. 67; May 8, 1792, s. 12, v. 1, p. 281; Mar. 2, 1799, s. 87, v. 1, p. 695.

SEC. 1788. Every officer of the United States concerned in the disbursement of the revenues thereof who carries on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be deemed guilty of a misdemeanor, and punished by a fine of three thousand dollars, and shall, upon conviction, be removed from office, and forever thereafter be incapable of holding any office under the United States.

Title 40.

Bond of special agents.
Aug. 4, 1854, s. 14, v. 10, p. 573.
See notes to this section under attorneys and agents.

SEC. 3614. Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agent shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve.

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*Note 1.*—The phrase "who is in arrears to the United States" seems to apply materially and properly only to persons who, having previous transactions of a pecuniary nature with the Government, are found, upon the settlement of those transactions, to be in *arrears* to the Government by holding in their hands *public moneys* which they are to refund. (Op., I, 676, Wirt, July 22, 1824; III, 52, Butler, Mar. 21, 1836.) Pay of officers, ascertained to be in default, can be withheld where the time for the accounting duly has actually passed—not otherwise. (Op., IV, 33, May 24, 1842, Legare.)

"Pay," "salary," or "compensation" are synonymous terms, under the act of January 25, 1828, authorizing the withholding of the pay of persons in arrears. The authority does not extend to rations. (Op., II, 420.) "Extra pay," which is not pay proper, can not be withheld. (Op., II, 593.)

The officers of the Treasury are authorized to withhold the pay of officers of the Government who are ascertained to be defaulters, where the time for accounting has actually passed, but not otherwise. "Forthwith" is equivalent to "without unnecessary delay." (Op., IV, 33, Legare, May 24, 1842.)

It is the duty of disbursing officers to repay funds remaining in hand when the time for them to go to the surplus fund arrives. Certificates issued previous to that time, upon claims definitely ascertained, may be paid out of these appropriations, even though the time has passed for them to go to the surplus fund, if the disbursing officer has any of the appropriation in his hands. For what period and to what amount such officers should be allowed to retain funds in their hands for that purpose is a matter of administration falling within the province of the Secretary of the Treasury to regulate. (Op., XV, 357, Devens, Aug. 10, 1877.)

The words "expenditures incurred" do not mean liabilities incurred. To incur an expenditure is to make a payment—to expend money. To incur liability and to incur an expenditure are two different and distinct things; and while the word incur is not frequently used in connection with expenditure, yet when used it means an expenditure actually made. (Op., XIV, 128, Williams, Sept. 17, 1873.)

SEC. 3620. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.

Duty of disbursing officers. June 14, 1866, s. 1, v. 14, p. 64; Feb. 27, 1877, v. 19, p. 249. See note 1. See sec. 5488.

SEC. 3621. Every person who shall have moneys of the United States in his hands or possession shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, and take his receipt for the same, in duplicate, and forward one of them forthwith to the Secretary of the Treasury.

Penalty for failure to deposit money when required. Mar. 3, 1857, s. 3, v. 11, p. 249. See note 2. See sec. 5492.

SEC. 3622. Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provi-

Accounts. July 17, 1862, s. 1, v. 12, p. 593; Mar. 2, 1867, res. 48, v. 14, p. 571; July 15, 1870, s. 15, v. 15, p. 334; Feb. 27, 1877, v. 19, p. 249. See note 3. See note 5 and proviso repealing part of this sec. See sec. 5491.

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*Note 1.*—If a disbursing officer in good faith deposits public money in a designated depository, loss of the moneys through failure of the bank can not be imputed to the fault or negligence of the officer. So long as the Government holds him responsible and does not bring suit, so long he has the right to petition the Court of Claims for relief. (C. C., XVII, 189.)

*Note 2.*—Money in the hands of a disbursing officer of the United States due and payable by him to a private person can not be attached by process out of the State courts. (4 Howard, 20.) It is not competent to the State courts to enjoin officers of the Executive Departments from executing the lawful orders thereof, whether they concern the payment of money for the performance of contracts with the United States or any other matter. (Op., XVI, 257, Devens, Jan. 29, 1879.)

The Supreme Court has repeatedly decided that the courts have no jurisdiction or authority over the moneys of the Government in the hands of its agents, and that such moneys can not be enjoined or controlled by a mandamus. (Op., VII, 81, Cushing, Mar. 29, 1855.) Not subject to attachment at the suit of creditors of the parties to whom such money is due. (Op., XIII, Akerman, Jan. 7, 1872; see also Op., X, 120.)

DECISIONS OF AUDITORS.

*Note 3.*—It is no part of the duties of the Auditors (except the Sixth Auditor) to make decisions binding in any way upon anybody, and their opinions and decisions upon controverted questions, if they choose to give them, have no official determining force. (R. S., secs. 276–300.)

C. C., v. 18, p. 707. Ridgeway's case.

sions of this section. The Secretary of the Treasury may, if in his opinion the circumstances of the case justify and require it, extend the time hereinbefore prescribed for the rendition of accounts. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require.

July 31, 1894.

Current accounts; when to be rendered. See note 1.

SEC. 12. All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate,

—when to be sent to Auditor, sec. 22, below.

and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts.

Requisitions may be disapproved on delinquency.

Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition,

—or other reasons.

which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested;

—subject to Secretary of the Treasury.

but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons:

Rules for particular cases. See note 2.

*Provided*, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them:

Prompt returns required.

Delays in transmitting accounts to Auditor.

*Provided further*, That should there be a delay in the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President in the particular case shall be necessary to authorize the advance of money requested:

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*Note 1.*—This section is a substitute for parts of R. S., sec. 3622. A portion of that section is expressly repealed at the close of this section 12. See penalty for failure to render accounts, R. S., sec. 5491, and rule as to manner of keeping accounts R. S., sec. 3623.

*Note 2.*—By letter of September 29, 1894, to the Secretary of the Interior, the Secretary of the Treasury made the following order under this provision:

"You are respectfully requested to notify the proper officer of your Department that in accordance with authority contained in section 12 of the 'Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes,' which provides that the Secretary of the Treasury * * * 'may make orders in particular cases, relaxing the requirements of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same,' * * * the requirements of Department circular No. 114 are hereby modified so far as relates to rendition of accounts of pension agents for the same months in which the quarterly payments at their agencies fall due and the period for the rendition of such accounts is hereby extended to twenty-five days after the close of the month to which they relate, there being a manifest difficulty in rendering such accounts within the ten days prescribed by section 12 of the act of July 31, 1894."

The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers as are then delinquent in the rendering of their accounts or in the payment of balances found due from them for the last preceding fiscal year.

Annual report of delinquencies.

Sections two hundred and fifty and two hundred and seventy-two of the Revised Statutes are repealed.

Repeal of R. S., secs. 250, 272.

Section thirty-six hundred and twenty-two of the Revised Statutes is amended by striking therefrom the following words:

"The Secretary of the Treasury may, if in his opinion the circumstances of the case justify and require it, extend the time hereinbefore prescribed for the rendition of accounts."

Extension of time by Secretary repealed. R. S., sec. 3622.

* * * * * * *

SEC. 14. In the case of claims presented to an Auditor which have not had an administrative examination, the Auditor shall cause them to be examined by two of his subordinates independently of each other.

Where no administrative examination, sec. 22, below.

SEC. 3623. All officers, agents, or other persons, receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them.

Distinct accounts required. Mar. 3, 1809, s. 1, v. 2, p. 535. See note 1.

SEC. 3624. Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the First Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury.

Suits to recover money from officers, regulated. Mar. 3, 1797, s. 1, v. 1, p. 512.

SEC. 3639. * * * all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. * * *

Duties of officers as custodians of public moneys. Aug. 6, 1846, s. 6, v. 9, p. 60; Mar. 3, 1857, s. 2, v. 11, p. 249; July 3, 1852, s. 7, v. 10, p. 12; Mar. 3, 1863, s. 5, v. 12, p. 770; July 4, 1864, s. 5, v. 13, p. 383; Apr. 21, 1862, s. 5, v. 12, p. 382; Feb. 18, 1869, s. 4, v. 15, p. 271. See sec. 5497.

SEC. 3648. No advance of public money shall be made in any case whatever. And in all cases of contracts for the

Advances of public moneys prohibited.

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DISBURSING AGENTS OF PUBLIC BUILDINGS.

*Note 1.*—An act approved August 7, 1882 (chap. 433, vol. 22, p. 306), provides that "any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed."

Jan. 31, 1823, s. 1, v. 3, p. 723. See sec. 1563.

performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected.

Title 70, chap. 6.

Officer of the United States guilty of extortion.

Mar. 3, 1825, s. 12, v. 4, p. 118.

SEC. 5481. Every officer of the United States who is guilty of extortion under color of his office shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than one year, except those officers or agents of the United States otherwise differently and specially provided for in subsequent sections of this chapter.

Receipting for larger sums than are paid.

Mar. 3, 1853, s. 4, v. 10, p. 239.

SEC. 5483. Every officer charged with the payment of any of the appropriations made by any act of Congress, who pays to any clerk, or other employé of the United States, a sum less than that provided by law, and requires such employé to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employé of the Government, and shall be imprisoned at hard labor for the term of two years.

Disbursing officers unlawfully depositing, converting, loaning, or transferring public money.

June 14, 1866, s. 2, v. 14, p. 64.

SEC. 5488. Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer, or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied; and shall be punished by imprisonment with hard labor, for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment.

Custodians of public money failing to safely keep, without loaning, etc.

Aug. 6, 1846, s. 16, v. 9, p. 63. See sec. 3639.

SEC. 5490. Every officer or other person charged by any act of Congress with the safe-keeping of the public moneys, who fails to safely keep the same, without loaning, using, converting to his own use, depositing in banks, or exchanging for other funds than as specially allowed by law, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged; and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled.

SEC. 5491. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law, shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled, and shall be imprisoned not less than six months or more than ten years.

Failure of officer to render accounts, etc. July 17, 1862, s. 1, v. 12, p. 593; July 15, 1870, s. 15, v. 16, p. 334; Mar. 2, 1867, res. 48, v. 14, p. 571; Aug. 6, 1846, s. 16, v. 9, p. 63. See secs. 3622, 3633.

SEC. 5492. Every person who, having moneys of the United States in his hands or possession, fails to make deposit of the same with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper Department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money embezzled.

Failure to deposit as required. Mar. 3, 1857, s. 3, v. 11, p. 249; Aug. 6, 1846, s. 16, v. 9, p. 63.

SEC. 5493. The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same.

Provisions of the five preceding sections, how applied. Aug. 6, 1846, s. 16, v. 9, p. 63.

SEC. 5494. Upon the trial of any indictment against any person for embezzling public money under the provisions of the six preceding sections, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money.

Record evidence of embezzlement. Ibid. See secs. 3625, 3633, under Distress Warrants.

SEC. 5495. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money, to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as prima-facie evidence of such embezzlement.

Prima-facie evidence. Aug. 6, 1846, s. 16, v. 9, p. 63.

SEC. 5496. If any officer charged with the disbursement of the public moneys, accepts, receives, or transmits to the Treasury Department to be allowed in his favor, any receipt or voucher from a creditor of the United States, without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion, by such officer, to his own use, of the amount specified in such receipt or voucher.

Evidence of conversion. Ibid. See sec. 3652, under Checks.

Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertain-

Supp. Rev. Stat., vol. 2, p. 418–419.

Official bonds to be examined every two years.

ing the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

—to be renewed every four years.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates.

—or oftener.

But he may require such bonds to be renewed or strengthened oftener if he deem such action necessary.

—renewal waived, when.

In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor:

Liability not affected.

*Provided*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States:

—to continue until appointment, etc., of successor.

*Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal:

Postal bonds not affected. R. S., 3836.

*And further provided*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States.

## CHECKS AND DRAFTS.


Sec.
300. Allowance of lost checks.
306. Liabilities outstanding three or more years.
307. Vouchers for drafts remaining unpaid.
308. Payment upon presentation of outstanding drafts.
309. Accounts of disbursing officers unchanged for three years.
310. Reports of disbursing officers, etc.
3645. Regulations for presenting drafts.
3646. Duplicates for lost or stolen checks.
3647. Duplicate check when officer who issued is dead.
3651. Exchange of funds restricted.
3652. Premium on sales of public money to be accounted for.


Title 7, chap. 4.

Allowance of lost checks. Feb. 2, 1872, ss. 1, 2, v. 17, p. 29.

SEC. 300. Whenever the disbursing officer, or agent by whom was issued any check which has been lost, destroyed, or stolen, is dead, or no longer in the service of the United States, the proper accounting officer shall, under such regulations as the Secretary of the Treasury may prescribe, state an account in favor of the owner of such original check for the amount thereof, and charge such amount to the account of such officer or agent.

Title 7, chap. 5.

Liabilities outstanding three or more years. May 2, 1866, ss. 1, 4, v. 14, pp. 41, 42.

SEC. 306. At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any Department of the Government, upon the Treasurer or any assistant treasurer, or designated depositary of the United States, or upon any national bank designated as a depositary of the United States, and which shall be represented on the books of either such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained

outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities."

Vouchers for drafts remaining unpaid. May 2, 1866, s. 2, v. 14, p. 41.

SEC. 307. The certificate of the Register of the Treasury, stating that the amount of any draft issued by the Treasurer, to facilitate the payment of a warrant directed to him for payment, has remained outstanding and unpaid for three years or more, and has been deposited and covered into the Treasury in the manner prescribed by the preceding section, shall be, when attached to any such warrant, a sufficient voucher in satisfaction of any such warrant or part of any warrant, the same as if the drafts correctly indorsed and fully satisfied were attached to such warrant or part of warrant. And all such moneys mentioned in this and in the preceding section shall remain as a permanent appropriation for the redemption and payment of all such outstanding and unpaid certificates, drafts, and checks.

Payment upon presentation of outstanding drafts. Ibid., s. 3.

SEC. 308. The payee or the bona-fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States.

Accounts of disbursing officers unchanged for three years. Ibid., s. 5.

SEC. 309. The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit.

Reports of Treasurer, assistant treasurers, etc., and disbursing officers. Ibid., s. 6.

SEC. 310. The Treasurer, each assistant treasurer, and each designated depositary of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and

which may then have been outstanding and unpaid for three years, and more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee.

Title 40.

Regulations for presentment of drafts.
Aug. 6, 1846, s. 31, v. 9, p. 65.
See secs. 5495, 5496. Disbursing Officers.

SEC. 3645. It shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all Government drafts, for payment, at the place where payable, and to prescribe the time, according to the different distances of the depositaries from the seat of Government, within which all drafts upon them, respectively, shall be presented for payment; and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be his duty to guard, as far as may be, against those drafts being used or thrown into circulation as a paper currency or a medium of exchange.

Duplicates for lost or stolen checks authorized.
Feb. 2, 1872, s. 1, v. 17, p. 29.

SEC. 3646. Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of one thousand dollars.

Duplicate check when officer who issued is dead.
Ibid., s. 2.

SEC. 3647. In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued, is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall prescribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent.

Exchange of funds restricted.
Aug. 6, 1846, s. 20, v. 9, p. 64; July 11, 1862, s. 1, v. 12, p. 532; Feb. 22, 1862, s. 1, v. 12, p. 345; June 3, 1864, s. 23, v. 13, p. 106; Mar. 3, 1863, s. 3, v. 12, p. 610.

SEC. 3651. No exchange of funds shall be made by any disbursing officer or agent of the Government, of any grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the moneys so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the

head of the proper Department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office, or restored to his trust and the performance of his duties, as the President may deem just and proper.

Premiums on sales of public moneys to be accounted for. Aug. 6, 1846, s. 21, v. 9, p. 65. See note 1.

SEC. 3652. No officer of the United States shall, either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office.

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*Note 1.*—Approved bills or accounts or vouchers are not in any proper sense negotiable paper. The Government would not be required to pay to party to whom they were assigned, if it had itself an equitable claim against the contractor; nor if satisfied that the account had been erroneously approved. Section 3477, R. S., regulates the manner of paying assigned bills, etc. That statute is of universal application. The Department can reissue an approved account in favor of contractor. [Case of bills made out in favor of broker instead of contractors, and assigned by former.] (Op., XVI, 191, Devens, Oct. 23, 1878.)

The protection which commercial usage throws around negotiable paper can not be used to establish the authority of an agent who issued it. Whenever negotiable paper is found in market upon which the Government is apparently a party, the purchaser must, at his peril, see that the officer who indorsed or accepted it had authority to bind the Government. (C. C., VII, 65; Wallace, VII, 666.)

Acceptance of payment in one kind of money (Treasury notes) is a waiver of a claim, antecedently asserted for gold. It discharges the debt independently of the question whether paper money is a legal tender. (C. C., VI, 216.)

There is no objection in point of law, to the indorsement of a bill of exchange, under authority derived from a power of attorney. (Op., I, 188.)

Where an officer is authorized to pay money at a distant point, he may transmit it by drafts. (7 Wallace, p. 466; C. C., VII, p. 65.)

Checks given by paymasters are valid obligations of the Government, although dishonored for want of funds to the credit of the officers who issued them. (Op., XI, 216, Speed, Apr. 22, 1865; see also, XI, p. 156.)

It does not follow that because an officer may lawfully issue bills of exchange for some purpose, he can in that mode bind the Government in other cases where he has no such authority. (7 Wallace, 666.)

Whenever the United States Government, through their authorized officer, accept a bill of exchange, they are bound for its payment to a bona fide holder for value, whatever may have been the equities as between them and the drawer. (U. S. *v.* Bank Metropolis, XV, Peters, 377.)

Whether checks shall be made payable only to the person entitled to the money, or "to bearer" or "to order," is a matter to be regulated entirely by the Treasury Department. The only imperative requisition is that the check shall be drawn only in favor of the person to whom the payment is to be made. (Op., XV, 288, June 4, 1877, Devens.)

It is competent for the Secretary of the Treasury to permit disbursing officers to draw checks payable to themselves or bearer or order for such amounts as may be necessary to make payments of small amounts, to make payments at a distance from a depository, or to make payments of fixed salaries as now authorized by Department regulations of August 24, 1876, provided, always, that such checks bear indorsed upon them the names of the persons to whom the amounts are to be paid, or the claim upon which they are to be paid, or are accompanied by a list or schedule, made a part of the check, containing the same information. (Op., XV, 303, June 8, 1877, Devens.)

## COINS, WEIGHTS, AND MEASURES, LEGAL-TENDER, DIES.

### GOLD AND SILVER COINS OF THE UNITED STATES.

Sec.
3511. Gold coins of the United States and their weight.
3513. Silver coins and their weight.
3514. Standard for gold and silver coins.
3515. Minor coins; their weight and alloy.
3517. Inscriptions upon coins.
3535. Deviations allowed in adjusting weights of gold coins.
3536. Adjusting weight of silver coins.
3537. Adjusting weight of minor coins.
3585. Gold coins, legal tender.
Act of June 9, 1879. Exchange of silver coins.
—— Twenty-cent piece.
—— Trade dollars, etc.

Title 37.

Gold coins of the United States and their weight. Feb. 12, 1873, s. 14, v. 17, p. 426.

SEC. 3511. The gold coins of the United States shall be a one-dollar piece, which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter-eagle, or two and a half dollar piece; a three-dollar piece; a half-eagle, or five-dollar piece; an eagle, or ten-dollar piece; and a double-eagle, or twenty-dollar piece. And the standard weight of the gold dollar shall be twenty-five and eight-tenths grains; of the quarter-eagle, or two and a half dollar piece, sixty-four and a half grains; of the three-dollar piece, seventy-seven and four-tenths grains; of the half-eagle, or five-dollar piece, one hundred and twenty-nine grains; of the eagle, or ten-dollar piece, two hundred and fifty-eight grains; of the double-eagle, or twenty-dollar piece, five hundred and sixteen grains.

Silver coins and their weight. Ibid., s. 15.

SEC. 3513. The silver coins of the United States shall be a trade-dollar, a half-dollar, or fifty-cent piece, a quarter dollar, or twenty-five cent piece, a dime, or ten-cent piece; and the weight of the trade-dollar shall be four hundred and twenty grains troy; the weight of the half-dollar shall be twelve grams and one-half of a gram; the quarter-dollar and the dime shall be, respectively, one-half and one-fifth of the weight of said half-dollar.

Standard for gold and silver coins. Feb. 12, 1873, s. 13, v. 17, p. 426. See sec. 5460, R. S.

SEC. 3514. The standard for both gold and silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy. The alloy of the silver coins shall be of copper. The alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy.

Minor coins; their weight and alloy. Ibid., s. 16.

SEC. 3515. The minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece. The alloy for the five and three cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the one-cent piece shall be ninety-five per centum of copper and five per centum of tin and zinc, in such proportions as shall be determined by the Director of the Mint. The weight of the piece of five cents shall be seventy-seven and sixteen hundredths grains troy; of the three-cent piece, thirty grains; and of the one-cent piece, forty-eight grains.

Inscriptions upon coins.

SEC. 3517. Upon the coins there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of

the word "Liberty" and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum," and a designation of the value of the coin; but on the gold dollar and three-dollar piece, the dime, five, three, and one cent piece, the figure of the eagle shall be omitted; and on the reverse of the silver trade-dollar the weight and the fineness of the coin shall be inscribed.

Ibid., s. 18.

SEC. 3535. In adjusting the weights of the gold coins, the following deviation shall not be exceeded in any single piece: In the double-eagle and the eagle, one-half of a grain; in the half-eagle, the three-dollar piece, the quarter-eagle, and the one-dollar piece, one-fourth of a grain. And in weighing a number of pieces together, when delivered by the coiner to the superintendent, and by the superintendent to the depositor, the deviation from the standard weight shall not exceed one hundredth of an ounce in five thousand dollars in double-eagles, eagles, half-eagles, or quarter-eagles, in one thousand three-dollar pieces, and in one thousand one-dollar pieces.

Deviations allowed in adjusting weights of gold coins. Ibid., s. 36.

SEC. 3536. In adjusting the weight of the silver coins the following deviations shall not be exceeded in any single piece: In the dollar, the half and quarter dollar, and in the dime, one and one-half grains. And in weighing a large number of pieces together, when delivered by the coiner to the superintendent, and by the superintendent to the depositor, the deviations from the standard weight shall not exceed two-hundredths of an ounce in one thousand dollars, half-dollars, or quarter-dollars, and one-hundredth of an ounce in one thousand dimes.

Of silver coins. Ibid., s. 37.

SEC. 3537. In adjusting the weight of the minor coins provided by this Title, there shall be no greater deviation allowed than three grains for the five-cent piece and two grains for the three and one cent pieces.

Of minor coins. Ibid., s. 38.

SEC. 3585. The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight.

Title 39.

Gold coins of the United States. Ibid., s. 14.

The holder of any of the silver coins of the United States of smaller denomination than one dollar may, on presentation of the same in sums of twenty dollars, or any multiple thereof, at the office of the Treasurer or any assistant treasurer of the United States, receive therefor lawful money of the United States.

June 9, 1879.

Exchange of silver coins. June 9, 1879, s. 1, v. 21, p. 7. See note 1.

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*Note 1* (May 2, 1878).—Coinage of the twenty-cent piece of silver authorized by the act of March 3, 1875, prohibited.

By the act of July 22, 1876 (v. 19, p. 215), the trade dollar is not thereafter to be a legal tender.

An act of February 28, 1878 (v. 20, p. 25), provides for the coinage at the mints of United States silver dollars of the weight of four hundred and twelve and a half grains troy of standard silver as provided in the act of January 18, 1837, which, with the silver dollars of that weight and fineness theretofore coined by the United States, shall be a legal tender at their nominal value for all debts and dues, public and private, except where otherwise expressly stipulated in the contract.

Idem, s. 3.

The present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues, public and private.

## FOREIGN COINS.

Sec.
3564. Value of foreign coins, how ascertained.
3565. Value of the sovereign or pound sterling.
3566. Recoinage of foreign coins.
3567. Spanish and Mexican coins.
3584. Not a legal tender, etc.
Table. Estimate of value of foreign coins.

Title 37.

Value of foreign coins, how ascertained. Mar. 3, 1873, s. 1, v. 17, p. 602.

SEC. 3564. The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

Value of the sovereign or pound sterling. Ibid, s. 2.

SEC. 3565. In all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills, and the same rule shall be applied in appraising merchandise imported where the value is, by the invoice, in sovereigns or pounds sterling, and in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, eighteen hundred and seventy-four, based on an assumed par of exchange with Great Britain of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void.

Recoinage of foreign coin. Feb. 9, 1793, s. 3, v. 1, p. 301; Feb. 21, 1857, s. 2, v. 11, p. 163.

SEC. 3566. All foreign gold and silver coins received in payment for moneys due to the United States shall, before being issued in circulation, be coined anew.

Spanish and Mexican coins. Feb. 21, 1857, s. 1, v. 11, p. 163.

SEC. 3567. The pieces commonly known as the quarter, eighth, and sixteenth of the Spanish pillar-dollar, and of the Mexican dollar, shall be receivable at the Treasury of the United States, and its several offices, and at the several post-offices, and land-offices, at the rates of valuation following: the fourth of a dollar, or piece of two reals, at twenty cents; the eighth of a dollar, or piece of one real, at ten cents; and the sixteenth of a dollar, or half-real, at five cents.

Title 39.

Foreign coins. Feb. 21, 1857, s. 3, v. 11, p. 163.

SEC. 3584. No foreign gold or silver coins shall be legal tender in payment of debts.

CIRCULAR ESTIMATING AND PROCLAIMING, IN THE UNITED STATES MONEY OF ACCOUNT, THE VALUES OF THE STANDARD COINS IN CIRCULATION OF THE VARIOUS NATIONS OF THE WORLD.

1883. DEPARTMENT No. 1. *Secretary's Office.* } TREASURY DEPARTMENT, BUREAU OF THE MINT, *Washington, D. C., January 1, 1883.*

SIR: In pursuance of the provisions of section 3564 of the Revised Statutes of the United States, I have estimated

the values of the standard coins in circulation of the various nations of the world, and submit the same in the accompanying table.

Very respectfully,

HORATIO C. BURCHARD,
*Director of the Mint.*

Hon. CHAS. J. FOLGER,
*Secretary of the Treasury.*

*Estimate of values of foreign coins.*

| Country. | Monetary unit. | Standard. | Value in United States money. | Standard coin. |
|---|---|---|---|---|
| Argentine Republic | Peso | Gold and silver. | $0 96.5 | $\frac{1}{10}$, $\frac{1}{5}$, $\frac{1}{2}$, and 1 peso, $\frac{1}{2}$ argentine and argentine. |
| Austria | Florin | Silver | 40.1 | |
| Belgium | Franc | Gold and silver. | 19.3 | 5, 10, and 20 francs. |
| Bolivia | Boliviano | Silver | 81.2 | Boliviano. |
| Brazil | Milreis of 1,000 reis. | Gold | 54.6 | |
| British Possessions in North America. | Dollar | do | 1 00 | |
| Chili | Peso | Gold and silver. | 91.2 | Condor, doubloon, and escudo. |
| Cuba | do | do | 93.2 | $\frac{1}{10}$, $\frac{1}{5}$, $\frac{1}{2}$, and 1 doubloon. |
| Denmark | Crown | Gold | 26.8 | 10 and 20 crowns. |
| Ecuador | Peso | Silver | 81.2 | Peso. |
| Egypt | Piaster | Gold | 04.9 | 5, 10, 25, 50, and 100 piasters. |
| France | Franc | Gold and silver. | 19.3 | 5, 10, and 20 francs. |
| Great Britain | Pound sterling | Gold | 4 86.6½ | ½ sovereign and sovereign. |
| Greece | Drachma | Gold and silver. | 19.3 | 5, 10, 20, 50, and 100 drachmas. |
| German Empire | Mark | Gold | 23.8 | 5, 10, and 20 marks. |
| Hayti | Gourde | Gold and silver. | 96.5 | 1, 2, 5, and 10 gourdes. |
| India | Rupee of 16 annas. | Silver | 38.6 | |
| Italy | Lira | Gold and silver. | 19.3 | 5, 10, 20, 50, and 100 lire. |
| Japan | Yen | Silver | 87.6 | 1, 2, 5, 10, and 20 yen; gold and silver yen. |
| Liberia | Dollar | Gold | 1 00 | |
| Mexico | do | Silver | 88.2 | Peso or dollar 5, 10, 25, and 50 centavo. |
| Netherlands | Florin | Gold and silver. | 40.2 | |
| Norway | Crown | Gold | 26.8 | 10 and 20 crowns. |
| Peru | Sol | Silver | 81.2 | Sol. |
| Portugal | Milreis of 1,000 reis. | Gold | 1 08 | 2, 5, and 10 milreis. |
| Russia | Rouble of 100 copecks. | Silver | 65 | $\frac{1}{4}$, $\frac{1}{2}$, and 1 rouble. |
| Spain | Peseta of 100 centimes. | Gold and silver. | 19.3 | 5, 10, 20, 50, and 100 pesetas. |
| Sweden | Crown | Gold | 26.8 | 10 and 20 crowns. |
| Switzerland | Franc | Gold and silver. | 19.3 | 5, 10, and 20 francs. |
| Tripoli | Mahbub of 20 piasters. | Silver | 73.3 | |
| Turkey | Piaster | Gold | 04.4 | 25, 50, 100, 250, and 500 piasters. |
| United States of Colombia. | Peso | Silver | 81.2 | Peso. |
| Venezuela | Bolivar | Gold and silver. | 19.3 | 5, 10, 20, 50, and 100 Bolivar. |

TREASURY DEPARTMENT,
*Washington, D. C., January 1, 1883.*

The foregoing estimation, made by the Director of the Mint, of the value of the foreign coins above mentioned, I hereby proclaim to be the values of such coins expressed in the money of account of the United States, and to be taken in estimating the values of all foreign merchandise, made out in any of said currencies, imported on or after January 1, 1883.

CHAS. J. FOLGER,
*Secretary of the Treasury.*

## WEIGHTS AND MEASURES.

Sec.
3569. Use of the metric system authorized.
3570. Authorized tables of weights and measures.
3551. Dies may be executed, etc.

Title 37.

Use of metric system authorized.
July 28, 1866, s. 1, v. 14, p. 339.

SEC. 3569. It shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objection because the weights or measures expressed or referred to therein are weights or measures of the metric system.

Authorized tables of weights and measures.
Ibid., s. 2.

SEC. 3570. The tables in the schedule hereto annexed shall be recognized in the construction of contracts, and in all legal proceedings, as establishing, in terms of the weights and measures now in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and the tables may lawfully be used for computing, determining, and expressing in customary weights and measures the weights and measures of the metric system.

*Measures of length.*

| Metric denominations and values. | | Equivalents in denominations in use. |
|---|---|---|
| Myriameter | 10,000 meters. | 6.2137 miles. |
| Kilometer | 1,000 meters. | 0.62137 miles, or 3,280 feet and 10 inches. |
| Hectometer | 100 meters. | 328 feet and 1 inch. |
| Dekameter | 10 meters. | 393.7 inches. |
| Meter | 1 meter. | 39.37 inches. |
| Decimeter | $\frac{1}{10}$ of a meter. | 3.937 inches. |
| Centimeter | $\frac{1}{100}$ of a meter. | 0.3937 inches. |
| Millimeter | $\frac{1}{1000}$ of a meter. | 0.0394 inches. |

*Measures of capacity.*

| Metric denominations and values. | | | Equivalents in denominations in use. | |
|---|---|---|---|---|
| Names. | No. of liters. | Cubic measure. | Dry measure. | Liquor or wine measure. |
| Kiloliter, or stere. | 1,000 | 1 cubic meter | 1.308 cub. yards | 264.17 galls. |
| Hectoliter | 100 | $\frac{1}{10}$ of a cubic meter | 2 bushels and 3.35 pecks. | 26.417 galls. |
| Dekaliter | 10 | 10 cub. decimeters | 9.08 quarts | 2.6417 galls. |
| Liter | 1 | 1 cub. decimeter | 0.908 quarts | 1.0567 qts. |
| Deciliter | $\frac{1}{10}$ | $\frac{1}{10}$ of a cubic decimeter. | 6.1022 cub. inch | 0.845 gills. |
| Centiliter | $\frac{1}{100}$ | 10 cub. centimeters | 0.6102 cub. inch | 0.338 fluid ounces. |
| Milliliter | $\frac{1}{1000}$ | 1 cub. centimeter | 0.061 cub. inch | 0.27 fluid drams. |

*Measures of surface.*

| Metric denominations and values. | | Equivalents in denominations in use. |
|---|---|---|
| Hectare | 10,000 square meters. | 2.471 acres. |
| Are | 100 square meters. | 119.6 square yards. |
| Centare | 1 square meter. | 1,550 square inches. |

*Weights.*

| Metric denominations and values. | | | Equivalents in denominations in use. |
|---|---|---|---|
| Names. | Number of grams. | Weight of what quantity of water at maximum density. | Avoirdupois weight. |
| Millier or tonneau | 1,000,000 | 1 cubic meter | 2,204.6 pounds. |
| Quintal | 100,000 | 1 hectoliter | 220.46 pounds. |
| Myriagram | 10,000 | 10 liters | 22.046 pounds. |
| Kilogram or kilo | 1,000 | 1 liter | 2.2046 pounds. |
| Hectogram | 100 | 1 deciliter | 3.5274 ounces. |
| Dekagram | 10 | 10 cubic centimeters | 0.3527 ounces. |
| Gram | 1 | 1 cubic centimeter | 15.432 grains. |
| Decigram | $\frac{1}{10}$ | $\frac{1}{10}$ of a cubic centimeter | 1.5432 grains. |
| Centigram | $\frac{1}{100}$ | 10 cubic millimeters | 0.1543 grains. |
| Milligram | $\frac{1}{1000}$ | 1 cubic millimeter | 0.0154 grains. |

SEC. 3551. Dies of a national character may be executed by the engraver, and national and other medals struck by the coiner of the Mint at Philadelphia, under such regulations as the superintendent, with the approval of the director of the Mint, may prescribe. Such work shall not, however, interfere with the regular coinage operations, and no private medal dies shall be prepared at any mint, or the machinery or apparatus thereof be used for that purpose.

Title 37.

National and other medals may be struck at mint at Philadelphia.

Feb. 12, 1873, s. 52, v. 17, p. 432; June 16, 1874, ch. 288, v. 18, p. 76.

## NAVY DEPARTMENT.

### SECRETARY AND BUREAUS.

Sec.
415. Establishment of the Department of Navy.
—— Act July 11, 1890, Assistant Secretary of the Navy.
417. Procurement of naval stores and equipment of vessels.
418. Custody of the books and records.
419. Establishment of Bureaus.
420. Custody of books and records of Bureaus.
421. Appointment of chiefs of Bureaus.
422. Chiefs of Bureaus of Yards and Docks, Equipment and Recruiting, Navigation, and Ordnance.
423. Chief of Bureau of Construction and Repair.
424. Chief of Bureau of Steam Engineering.
425. Chief of Bureau of Supplies and Accounts.
426. Chief of Bureau of Medicine and Surgery.
429. Reports to be made to Congress by the Secretary.
1375. Assistant to Bureau.
1436. Chiefs of Bureaus, staff officers, exempt from sea duty.
1471. Title of chiefs of Bureaus.
1472. Relative rank of chief of Bureau of lower title than commodore.
1473. Retired chiefs of Bureaus.
——. Surgeon-General to act on board of appeal.
1565. Pay of chiefs of Bureaus.
416. Clerks and other civil employés.
——. Chief Clerk—appointment clerk.
——. Navy Department building.

SEC. 415. There shall be at the seat of Government an Executive Department, to be known as the Department of the Navy, and a Secretary of the Navy, who shall be the head thereof.

Title 10.

Establishment of the Department of the Navy.

20 A.G.Op., p.8.

Apr. 30, 1798, s. 1, v. 1, p. 553.

**July 11, 1890.**

Supp. R. S., p. 772.
Assistant Secretary of the Navy.
See note 1.
R. S., sec. 416.
Mar. 3, 1891, ch. 541, par. 8.

For an assistant Secretary of the Navy, to be appointed, from civil life, by the President, by and with the advice and consent of the Senate, who shall receive a compensation, at the rate of four thousand five hundred dollars per annum.

**Mar. 3, 1891.**

Supp. R. S., p. 927.
Assistant Secretary of Navy.
July 11, 1890, ch. 667, par. 5.

Assistant Secretary of the Navy, who shall hereafter perform such duties as may be prescribed by the Secretary of the Navy or required by law.

**June 8, 1880.**

21 Stat. L., 164.
Supp. R. S., pp. 290-291.
Judge-Advocate-General of Navy to be appointed.
R. S., sec. 416.

That the President of the United States be, and he is hereby, authorized to appoint, for the term of four years, by and with the advice and consent of the Senate, from the officers of the Navy or the Marine Corps, a judge-advocate-general of the Navy, with the rank, pay, and allowances of a captain in the Navy or a colonel in the Marine Corps, as the case may be.

Office of, to be in Department; his duties, etc.
R. S., sec. 349.
June 19, 1878, ch. 329, par. 8.

And the office of the said judge-advocate-general shall be in the Navy Department, where he shall, under the direction of the Secretary of the Navy, receive, revise, and have recorded the proceedings of all courts-martial, courts of inquiry, and boards for the examination of officers for retirement and promotion in the naval service, and perform such other duties as have heretofore been performed by the solicitor and naval judge-advocate-general.

**June 5, 1896.**

29 Stat. L., 251.
Supp. R. S., v. 2, p. 500.
Navy.
Judge-advocate general's pay.
June 8, 1880, ch. 129 (1 Supp. R. S., 290).
R. S., § 349.

That the Act "to authorize the President to appoint an officer of the Navy or the Marine Corps to perform the duties of solicitor and judge-advocate-general, and so forth, and to fix the rank and pay of such officer," approved June eighth, eighteen hundred and eighty, is hereby amended by inserting in said Act in lieu of the words "with the rank, pay, and allowances of a captain in the Navy, or a colonel in the Marine Corps, as the case may be," the words "with the rank and highest pay of a captain [in] the Navy, or the rank, pay, and allowances of a colonel in the Marine Corps, as the case may be:"

—to date from 1892.
Became a law without the President's approval, June 5, 1896.

*Provided*, That this amendment shall take effect from July nineteenth, eighteen hundred and ninety-two, the date on which the present incumbent entered on duty, and that the amount herein appropriated shall be payable from the appropriation "Pay of the Navy."

**Mar. 28, 1896.**

29 Stat. L., 75.
Supp. R. S., v. 2, p. 454.

That hereafter the commissions of all officers under the direction and control of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the

*Note 1.*—R. S., § 1794, required all civil commissions for Presidential appointments to be made out and recorded in the Department of State.

The act in the text, together with those of 1874, March 18, ch. 57 (1 Supp. R. S., 5), relating to the Post-Office Department; 1875, March 3, ch. 131, § 14 (1 Supp. R. S., 78), relating to the Department of the Interior; and 1888, Aug. 8, ch. 786 (1 Supp. R. S., 605), relating to the Department of Justice, now require all commissions to be made out and recorded in the Department under which the officer is to serve.

Secretary of Agriculture shall be made out and recorded in the respective Departments under which they are to serve, and the Department seal affixed thereto, any laws to the contrary notwithstanding:

Commissions of all officers to be made out, etc., in their respective Departments.

*Provided*, That the said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States.

—seal not to be affixed till President signs.

SEC. 417. The Secretary of the Navy shall execute such orders as he shall receive from the President relative to the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as all other matters connected with the naval establishment.

Procurement of naval stores and equipment of vessels. Ibid. See title, Contracts. Also secs. 3660-3667, 3669, Appropriations.

SEC. 418. The Secretary of the Navy shall have the custody and charge of all the books, records, and other property now remaining in and appertaining to the Department of the Navy, or hereafter acquired by it.

Custody of the books and records. Ibid., s. 3, p. 554.

SEC. 419. The business of the Department of the Navy shall be distributed in such manner as the Secretary of the Navy shall judge to be expedient and proper among the following Bureaus:

Establishment of Bureaus. Aug. 31, 1842, s. 2, v. 5, p. 579; July 5, 1862, ss. 1, 4, v. 12, p. 510.

First. A Bureau of Yards and Docks.
Second. A Bureau of Equipment and Recruiting.
Third. A Bureau of Navigation.
Fourth. A Bureau of Ordnance.
Fifth. A Bureau of Construction and Repair.
Sixth. A Bureau of Steam Engineering.
Seventh. A Bureau of Provisions and Clothing.
Eighth. A Bureau of Medicine and Surgery.

See note 1. See sec. 425, 18 A. G. Op., p. 176.

SEC. 420. The several Bureaus shall retain the charge and custody of the books of records and accounts pertaining to their respective duties; and all of the duties of the Bureaus shall be performed under the authority of the Secretary of the Navy, and their orders shall be considered as emanating from him, and shall have full force and effect as such.

Custody of books and records of Bureaus. Aug. 31, 1842, s. 8, v. 5, p. 580; July 5, 1862, s. 4, v. 12, p. 511.

SEC. 421. The chiefs of the several Bureaus in the Department of the Navy shall be appointed by the President, by and with the advice and consent of the Senate, from the classes of officers mentioned in the next five sections respectively, or from officers having the relative rank of captain in the staff corps of the Navy, on the active list, and shall hold their offices for the term of four years.

Appointment of chiefs of Bureaus. July 5, 1862, ss. 1, 2, v. 12, p. 510; Mar. 3, 1871, s. 10, v. 16, p. 537. 17 A. G. Op., p. 648.

SEC. 422. The chiefs of the Bureau of Yards and Docks, of the Bureau of Equipment * * *, of the Bureau of Navigation, and of the Bureau of Ordnance, shall be appointed from the list of officers of the Navy, not below the grade of commander.

July 5, 1862, s. 1, v. 12, p. 510.

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*Note 1.*—Title changed to Bureau of Supplies and Accounts (see act July 19, 1892, Supp. vol. 2, p. 206). The title of the Bureau of Equipment and Recruiting has been changed to "Bureau of Equipment."

Mar. 3, 1893.

Supp. R. S. 1892-95, p. 130.

Bureau of Navigation,—assistant to chief may be detailed.

R. S., secs. 419-422.

—to act as chief in case of vacancy.

R. S., sec. 179. See note 1.

That an officer of the Navy not below the rank of commander may be detailed as assistant to the Chief of the Bureau of Navigation in the Navy Department, and such officer shall receive the highest pay of his grade,

and, in case of the death, resignation, absence, or sickness of the Chief of the Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such Chief until his successor is appointed or such absence or sickness shall cease.

Ibid.

See Title "Naval Constructors."

SEC. 423. The chief of the Bureau of Construction and Repair shall be appointed from the list of officers of the Navy, not below the grade of commander, and shall be a skillful naval constructor.

Ibid.

SEC. 424. The chief of the Bureau of Steam Engineering shall be appointed from the chief engineers of the Navy, and shall be a skillful engineer.

Ibid.

Title changed to Bureau of Supplies and Accounts. See act of July 19, 1892.

SEC. 425. The chief of the Bureau of Provisions and Clothing shall be appointed from the list of paymasters of the Navy of not less than ten years' standing.

July 26, 1894.

Vol. 2, Supp. R. S. 1892-95, pp. 206-207.

Bureau of Supplies and Accounts, assistant chief.

R. S., secs. 178, 179.

July 19, 1892, ch. 206, pars. 1, 2, and notes.

Bureau of Supplies and Accounts. That an officer of the pay corps of the Navy may be detailed as assistant to the Chief of the Bureau of Supplies and Accounts in the Navy Department, and that such officer shall, in case of the death, resignation, absence, or sickness of the Chief of the Bureau, unless otherwise directed by the President, as provided by section one hundred and seventy-nine of the Revised Statutes, perform the duties of such chief until his successor is appointed or such absence or sickness shall cease.

Ibid.

18 A. G. Op., p. 176.

See sec. 1375, Wales vs. Whitney, 114 U. S., 564.

SEC. 426. The chief of the Bureau of Medicine and Surgery shall be appointed from the list of the surgeons of the Navy.

Supp. R. S., vol. 2, p. 505.

Tests if deleterious to health.

SEC. 15. That the Commissioner of Internal Revenue is authorized to have applied scientific tests, and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health.

Appeals.

But in case of doubt or contest his decision in this class of cases may be appealed from to a board hereby constituted for the purpose, and composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Secretary of Agriculture, and the decision of this board shall be final in the premises.

Reports to Congress by Secretary of the Navy. See secs. 195, 196, Civil Service.

May 1, 1820, s. 2, v. 3, p. 567; Mar. 3, 1843, v. 5, p. 617; July 27, 1866, s. 3, v. 14, p. 365.

SEC. 429. The Secretary of the Navy shall make annual reports to Congress upon the following subjects:

First. A statement of the appropriations of the preceding fiscal year for the Department of the Navy, showing the amount appropriated under each specific head of appropriation, the amount expended under each head, and the balance which, on the thirtieth day of June preceding such

*Note 1.*—This section (R. S., sec. 179) authorizes the President to direct the duties of an officer to be performed by another officer in case of vacancy or absence.

report, remained unexpended. Such report shall be accompanied by estimates of the probable demands which may remain on each appropriation.

See sec. 1780. Contingent Fund.

Second. A statement of all offers for contracts for supplies and services made during the preceding year, by classes, indicating such as have been accepted.

Third. A statement showing the amounts expended during the preceding fiscal year for wages of mechanics and laborers employed in building, repairing, or equipping vessels of the Navy, or in receiving and securing stores and materials for those purposes, and for the purchase of material and stores for the same purpose; and showing the cost or estimated value of the stores on hand, under this appropriation, in the navy-yards, at the commencement of the next preceding fiscal year; and the cost or estimated value of articles received and expended during the year; and the cost or estimated value of the articles belonging to this appropriation which may be on hand in the navy-yards at the close of the next preceding fiscal year.

Fourth. A statement of all acts done by him in making sale of any vessel or materials of the Navy; specifying all vessels and materials sold, the parties buying the same, and the amount realized therefrom, together with such other facts as may be necessary to a full understanding of his acts.

June 19, 1878.

20 Stat. L., 167. Supp. R. S., pp. 193–194.

Tabular statement of receipts and expenditures of naval service to be laid before Congress annually.

R. S., sec. 429.

That from and after the passage of this act, it shall be the duty of the Secretary of the Treasury to transmit to Congress, annually, a tabular statement showing in detail the receipts and expenditures in the Naval service under each appropriation, as made up and determined by the proper officers of the Treasury Department, upon the accounts of disbursing-officers rendered for settlement.

Tabular statement of expenses of Navy, with account of balances, losses, etc.

SEC. 2. There shall be appended to this statement an account of balances in the hands of disbursing agents at the close of each fiscal year, and a report of any amounts lost or unaccounted for by voucher.

Jan. 30, 1885.

Supp. R. S. 1874–91, p. 473.

Secretary of Navy to report details of certain expenditures at each session of Congress.

Title of Bureau of Provisions and Clothing changed to Supplies and Accounts.

R. S., sec. 429. Aug. 5, 1882, ch. 389, s. 4; June 19, 1878, ch. 311.

SEC. 3. That the Secretary of the Navy is hereby directed to report to Congress, at its next and each regular session thereafter, the amount expended during the prior fiscal year, from the appropriations for the pay of the Navy, Bureaus of Navigation, Ordnance, Equipment and Recruiting, Yards and Docks, Medicine and Surgery, Provisions and Clothing, Construction and Repair, and Steam-Engineering, for civilians employed on clerical duty, or in any other capacity than as ordinary mechanics and workingmen, and to submit, under the estimates for pay of the Navy and for the respective Bureaus enumerated above, specific estimates for such civilian employees for the fiscal year eighteen hundred and eighty-seven, and each fiscal year thereafter.

Title 15, chap. 1.

Assistant to Bureau of Medicine and Surgery. July 16, 1862, s. 18, v. 12, p. 587; Feb. 27, 1877, v. 19, p. 244.

SEC. 1375. A surgeon, assistant surgeon, or passed assistant surgeon may be detailed as assistant to the Bureau of Medicine and Surgery, who shall receive the highest shore pay of his grade.

Title 15, chap. 2.

Chiefs of Bureaus exempted from sea duty.
Mar. 3, 1871, s. 10, v. 16, p. 537.

SEC. 1436. Any staff officer of the Navy who has performed the duty of a chief of a Bureau of the Navy Department for a full term shall thereafter be exempt from sea duty, except in time of war.

Title 15, chap. 4.

Rank and title of certain chiefs of Bureau.
Title of Bureau of Provisions and Clothing changed to Supplies and Accounts.
Mar. 3, 1871, s. 12, v. 16, p. 537.

SEC. 1471. The chiefs of the Bureau of Medicine and Surgery, Provisions and Clothing, Steam Engineering, and Construction and Repair, shall have the relative rank of commodore while holding said position, and shall have respectively the title of Surgeon-General, Paymaster-General, Engineer-in-Chief, and Chief Constructor.

When below rank of commodore.
Ibid.

SEC. 1472. When the office of chief of Bureau is filled by a line officer below the rank of commodore, said officer shall have the relative rank of commodore during the time he holds said office.

Rank of chiefs of Bureaus retired.
Ibid.
Title of Bureau of Provisions and Clothing changed to Supplies and Accounts.

SEC. 1473. Officers who have been or who shall be retired from the position of chiefs of the Bureau of Medicine and Surgery, of Provisions and Clothing, of Steam Engineering, or of Construction and Repair, by reason of age or length of service, shall have the relative rank of commodore.

Title 15, chap. 8.

Pay of chiefs of Bureaus.
Ibid.

SEC. 1565. The pay of chiefs of Bureaus in the Navy Department shall be the highest pay of the grade to which they belong, but not below that of commodore.

Title 10.

Clerical force.
July 5, 1862, v. 12, p. 510; July 2, 1864, s. 4, v. 13, p. 373; July 2, 1866, s. 8, v. 14, p. 207; Mar. 3, 1871, s. 3, v. 16, p. 492; Mar. 3, 1873, s. 1, v. 17, p. 501.
See notes 1 and 2.

SEC. 416. There shall be in the Department of the Navy: One chief clerk, at a salary of two thousand five hundred dollars a year, so long as there is no assistant secretary of the Navy, and at a salary of two thousand two hundred dollars a year when there is an assistant secretary of the Navy.

Supp. R. S., vol. 2, p. 509.
Navy Department.
Appointment, etc., clerk.
The act here referred to, 1896, May 28, ch. 252 (29 Stat. L., 164), appropriated for "appointment clerk, $1,800."

That the title "appointment clerk," office of the Secretary, Navy Department, provided for in the legislative, executive, and judicial appropriation act for the fiscal year eighteen hundred and ninety-seven, is hereby amended to read: "Clerk in charge of civil employments and labor regulations at navy-yards, who shall also perform the duties of appointment clerk of the Navy Department, two thousand two hundred and fifty dollars." * *

State, War, and Navy Department building.

The President is hereby authorized and directed to designate from the Engineer Corps of the Army or the Navy, an officer well qualified for the purpose, who shall be detailed to act as superintendent of the completed portions of the State, War, and Navy Department building, under direction of the Secretaries of State, War, and Navy, who are hereby constituted a commission for the purposes of the care and supervision of said building, as hereinafter specified. Said officer shall have charge of said building, and all the

Commission for care and supervision of building.

*Note 1.*—The legislative act of August 5, 1882, authorized the appointment of an Assistant Secretary from civil life. No appointment was made, and the provision was repealed March 3, 1883. (See act July 11, 1890, chap. 667, p. 254, authorizing appointment of an Assistant Secretary of the Navy.)

*Note 2.*—Office of Naval Solicitor abolished. See act of June 19, 1878, chap. 329, 20 Stat. L., p. 205, which repeals part of sec. 349 R. S.

engines, machinery, steam and water supply, heating, lighting, and ventilating apparatus, elevators, and all other fixtures in said building, and all necessary repairs and alterations thereof, as well as the direction and control of such force of engineers, watchmen, laborers, and others engaged about the building or the apparatus under his supervision; of the cleaning of the corridors and water closets; of the approaches, side-walks, lawns, court-yards, and areas of the building, and of all rooms in the sub-basement which contain the boilers and other machinery, or so much of said rooms as may be indispensable to the proper performance of his duties as herein provided.

Superintendent. See note under sec. 3614. Title, attorneys and agents of Government.

Office of the superintendent: One clerk class one; one chief engineer, at one thousand two hundred dollars; six assistant engineers, at one thousand dollars each; one captain of the watch, one thousand two hundred dollars; two lieutenants of the watch, at eight hundred and forty dollars each; forty-five watchmen; one machinist, at nine hundred dollars; one skilled laborer, at seven hundred and twenty dollars; seventeen firemen; four conductors of the elevator, at seven hundred and twenty dollars each; two assistant conductors of the elevator, at five hundred dollars each; sixteen laborers; one laborer, at six hundred dollars; and fifty-four charwomen, at one hundred and eighty dollars each; in all, eighty-two thousand three hundred dollars.

Employees in Superintendent's office.

SEC. 3. That the pay of assistant messengers, firemen, watchmen, and laborers provided for in this act, unless otherwise specially stated, shall be as follows: For assistant messengers, firemen, and watchmen, seven hundred and twenty dollars per annum each; for laborers, six hundred and sixty dollars per annum each.

Pay of assistant messengers. Mar. 3, 1883.

## PUBLIC DOCUMENTS—PUBLIC PRINTING AND BINDING.


Sec.
31. Department offices to be under Public Printer.
—. Requisitions.
51. Form and style of work.
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—. Army and Navy Registers.
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—. Classification of documents.
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87. Printing and binding to be done at Printing Office.
88. Printing for the President.
89. Appropriations not to be exceeded.
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96. Postmaster-General to contract for all envelopes.
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98. Documents to Department, etc., libraries.
—. Act Dec. 21, 1879. Impressions from vignettes, etc.


SEC. 31. All printing offices in the Departments now in operation, or hereafter put in operation, by law, shall be considered a part of the Government Printing Office, and

Departmentoffices to be under Public Printer.

shall be under the control of the Public Printer, who shall furnish all presses, types, imposing stones, and necessary machinery and material for said offices from the general supplies of the Government Printing Office; and all paper and material of every kind used in the said offices for departmenal work, except letter and note paper and envelopes, shall be supplied by the Public Printer; and all persons employed in said printing offices and binderies shall be appointed by the Public Printer, and be carried on his pay roll the same as employees in the main office, and shall be responsible to him: *Provided*, That the terms of this Act shall not apply to the office in the Weather Bureau, or, to so much of the printing as is necessary to expedite the work of the Record and Pension Division of the War Department nor to the printing office now in operation in the Census Office; but the Public Printer, with the approval of the Joint Committee on Printing, may abolish any of these excepted offices whenever in their judgment the economy of the public service would be thereby advanced.

*Proviso.* Exceptions.

Requisitions.

All work done in the said offices shall be ordered on blanks prepared for that purpose by the Public Printer, which shall be numbered consecutively, and must be signed by some one designated by the head of the Department for which the work is to be done, who shall be held responsible for all work thus ordered, and who shall quarterly report to the head of the Department a classified statement of the work done and the cost thereof, which report shall be transmitted to the Public Printer in time for his annual report to Congress. The Public Printer shall show in detail, in his annual report, the cost of operating each departmental office.

Cost of branch offices.

Form and style of work. R. S., sec. 3790, p. 745, amended.

SEC. 51. The forms and style in which the printing or binding ordered by any of the Departments shall be executed, and the material and the size of type to be used, shall be determined by the Public Printer, having proper regard to economy, workmanship, and the purposes for which the work is needed.

Sale of stereotypes, etc.

SEC. 52. The Public Printer shall sell, under such regulations as the Joint Committee on Printing may prescribe, to any person or persons who may apply additional or duplicate stereotype or electrotype plates from which any Government publication is printed, at a price not to exceed the cost of composition, the metal and making to the Government and ten per centum added: *Provided*, That the full amount of the price shall be paid when the order is filed: *And provided further*, That no publication reprinted from such stereotype or electrotype plates and no other Government publication shall be copyrighted.

*Provisos.* Price.

Copyrighting forbidden.

Duplication. R. S., sec. 3794, p. 745.

SEC. 53. The Public Printer shall examine closely the orders of the Senate and House for printing, and in case of duplication he shall print under the first order received.

Usual number of documents. R. S., sec. 3792, p. 745, amended.

SEC. 54. Whenever any document or report shall be ordered printed by Congress, such order to print shall signify the "usual number" of copies for binding and distri-

bution among those entitled to receive them. No greater number shall be printed unless ordered by either House, or as hereinafter provided. When a special number of a document or report is ordered printed, the usual number shall also be printed, unless already ordered. The usual number of documents and reports shall be one thousand six hundred and eighty-two copies.

Department, etc., publications.

SEC. 58. Whenever printing not bearing a Congressional number shall be done for any department or officer of the Government, except confidential matter, blank forms, and circular letters not of a public character, or shall be done for use of Congressional committees, not of a confidential character, two copies shall be sent, unless withheld by order of the committee, by the Public Printer to the Senate and House Libraries, respectively, and one copy each to the document rooms of the Senate and House, for reference; and these copies shall not be removed; and of all publications of the Executive Departments not intended for their especial use, but made for distribution, five hundred copies shall be at once delivered to the superintendent of documents for distribution to designated depositories and State and Territorial libraries.

Distribution.

Disposal of documents accumulating.

SEC. 67. All documents at present remaining in charge of the several Executive Departments, bureaus, and offices of the Government not required for official use shall be delivered to the superintendent of documents, and hereafter all public documents accumulating in said Departments, bureaus, and offices not needed for official use shall be annually turned over to the superintendent of documents for distribution or sale.

Nautical Almanac and Ephemeris.

SEC. 73. Of the Ephemeris and Nautical Almanac and of the papers supplementary thereto, one thousand five hundred copies; one hundred copies for the Senate, four hundred for the House, and one thousand for distribution or sale by the Navy Department. The five hundred copies printed for Congress and the usual number shall be for the calendar year next following, and those for the Navy Department for the third year following. The Secretary of the Navy is also authorized to cause additional copies of the Ephemeris, and of the Nautical Almanacs extracted therefrom, to be printed for the public service and for sale to navigators and others: *Provided*, That all moneys received from sales of the Ephemeris and of the Nautical Almanacs shall be deposited in the Treasury and placed to the credit of the general fund for public printing.

*Proviso.* Sales.

Observations, Naval Observatory.

Of the Observations of the Naval Observatory, one thousand eight hundred copies; three hundred for the Senate, seven hundred for the House, and eight hundred for distribution by the Naval Observatory, and of the astronomical appendixes to the above observations, one thousand two hundred separate copies, and of the meteorological and magnetic observations one thousand separate copies for distribution by the Naval Observatory.

Coast and Geodetic Survey.

Of the Report of the Superintendent of the Coast and Geodetic Survey, one thousand five hundred copies of part

one; two hundred copies for the Senate, six hundred copies for the House, and seven hundred copies for distribution by the Superintendent of the Coast and Geodetic Survey, and two thousand eight hundred copies of part two; two hundred for the Senate, six hundred for the House, and two thousand for distribution by the Superintendent of the Coast and Geodetic Survey.

Session laws. Vol. 18, p. 113. See p. 266.

Sale and distribution of U. S. statutes by Superintendent Documents.

The Secretary of State shall cause to be edited, printed, published, and distributed pamphlet copies of the statutes of the present and each future session of Congress to the officers and persons hereinafter provided for; said distribution shall be made at the close of every session of Congress, as follows:

To the President and Vice-President of the United States, two copies each; to each Senator, Representative and Delegate in Congress, one copy; to the Librarian of the Senate, for the use of Senators, one hundred copies; to the Librarian of the House, two hundred copies, for the use of Representatives and Delegates; to the Library of Congress, fourteen copies; to the Department of State, including those for the use of legations and consulates, six hundred copies; to the Treasury Department, three hundred copies; to the War Department, two hundred copies; to the Navy Department, one hundred copies; to the Department of the Interior, including those for the use of the surveyors-general and registers and receivers of public land offices, two hundred and fifty copies; to the Post-Office Department, fifty copies; to the Interstate Commerce Commission, ten copies; to the Department of Labor, five copies; to the Civil Service Commission, three copies; to the Department of Justice, including those for the use of the Chief Justice and associate justices of the Supreme Court and the judges and officers of the United States and Territorial courts, five hundred copies; to the Department of Agriculture, fifty copies; to the Smithsonian Institution, five copies; to the Government Printing Office, two copies; to the governors and secretaries of Territories, one copy each.

Statutes at Large. Vol. 18, p. 114.

After the close of each Congress the Secretary of State shall have edited, printed, and bound a sufficient number of the volumes containing the Statutes at Large enacted by that Congress to enable him to distribute copies, or as many thereof as may be needed, as follows:

To the President of the United States, four copies, one of which shall be for the library of the Executive Mansion; to the Vice-President of the United States, one copy; to each Senator, Representative, and Delegate in Congress, one copy; to the Librarian of the Senate, for the use of Senators, one hundred copies; to the Librarian of the House, for the use of Representatives and Delegates, two hundred copies; to the Library of Congress, fourteen copies; including four copies for the Law Library; to the Department of State, including those for the use of the legations and consulates, three hundred and eighty copies; to the Treasury Department, including those for the use of officers of customs, three hundred copies; to the War Department, seventy-five copies; to the Navy Department, seventy-five copies.

The pamphlet copies of the statutes and the bound copies of the Acts of each Congress shall be legal evidence of the laws and treaties therein contained in all the courts of the United States and of the several States therein. The said pamphlet and the Statutes at Large shall contain all laws, joint and concurrent resolutions passed by Congress, and also all conventions, treaties, proclamations, and agreements.

Force as evidence.

Contents.

Of the President's Message and accompanying documents and of the annual reports of the Departments to Congress there shall be printed one thousand copies for the Senate and two thousand for the House: *Provided*, That of the reports of the Chief of Engineers of the Army, the Commissioner of Patents, the Commissioner of Internal Revenue, the report of the Chief Signal Officer of the War Department, and of the Chief of Ordnance, the usual number only shall be printed.

Message and documents.

*Proviso.* Limit of certain reports.

Of the Registers of the Army and Navy, fifteen hundred copies of each; five hundred for the Senate and one thousand for the House.

Registers, Army and Navy.

Of the Tests of Iron and Steel, five hundred copies for distribution by the War Department.

Iron and Steel.

There shall be prepared under the direction of the Joint Committee on Printing a Congressional Directory, of which there shall be three editions during each long session and two editions during each short session of Congress. The first edition shall be distributed to Senators, Representatives, Delegates, the principal officers of Congress, and heads of Departments on the first day of the session, and shall be ready for distribution to others within one week thereafter. The number and distribution of such Directory shall be under the control of the Joint Committee on Printing. Official correspondence concerning the Directory may be had in penalty envelopes under the direction of the Joint Committee.

Congressional Directory. R. S., sec. 3861, p. 746, amended.

The Public Printer shall furnish the Congressional Record as follows and shall furnish gratuitously no others in addition thereto:

Congressional Record. Sole gratuitous distribution.

* * * * * * *

To the library of each of the eight Executive Departments, and to the Naval Observatory, Smithsonian Institution and the United States National Museum, one bound copy.

* * * * * * *

To enable the officer charged with the duty of preparing the Official Register of the United States to publish the same, the Secretary of the Senate, the Clerk of the House of Representatives, the head of each Executive Department of the Government, and the chief of each and every bureau, office, commission, or institution not embraced in an Executive Department, in connection with which salaries are paid from the Treasury of the United States, shall, on the first day of July in each year in which a new Congress is to assemble, cause to be filed with the Secretary of the Interior a full and complete list of all officers, agents, clerks,

Official Register. Preparation. R. S., sec. 510, p. 84, amended.

and other employees of said Department, bureau, office, commission, or institution connected with the legislative, executive, or judicial service of the Government, or paid from the United States Treasury, including military and naval officers of the United States, cadets, and midshipmen.

Said lists shall exhibit the salary, compensation, and emoluments allowed to each of said officers, agents, clerks, and other employees, the State or country in which he was born, the State or Territory and Congressional district and county of which he is a resident and from which he was appointed to office, and where employed.

A list of the names, force, and condition of all ships and vessels belonging to the United States, and when and where built, shall also be filed with the Secretary of the Interior by the heads of the Departments having supervision of such ships and vessels, for incorporation in the Official Register.

Editing, etc.

The Secretary of the Interior shall cause the Official Register to be edited, indexed, and published by the chief clerk of the Interior Department, on the first day of December following the first day of July above mentioned.

Distribution. R. S., secs. 511, 3800, pp. 85, 746, amended.

Of the Official Register three thousand copies shall be printed and bound, which shall be distributed as follows: To the President of the United States, four copies, one copy of which shall be for the library of the Executive Mansion; to the Vice-President of the United States, two copies; to each Senator, Representative, and Delegate in Congress, one copy; to the Secretary and Sergeant-at-Arms of the Senate, to the Clerk and Sergeant-at-Arms of the House, one copy each; to the library of the Senate, ten copies; to the library of the House of Representatives, ten copies; to the Library of Congress, twenty-five copies; to the Department of State, one hundred copies; to the Treasury Department, one hundred and fifty copies; to the War Department, fifty copies; to the Navy Department, twenty copies. * * *

Monthly volume of patents issued. R. S., sec. 490, p. 81, amended.

Copies of the specifications and drawings of each patent issued, bound in monthly volumes, one copy for each of the Executive Departments of the Government, one copy to be placed for free public inspection in each capitol of every State and Territory, one for the like purpose in the clerk's office of the district court of each judicial district of the United States, except when such offices are located in State or Territorial capitols, and one in the Library of Congress, which copies shall be certified under the hand of the Commissioner and seal of the Patent Office, and shall not be taken from the depositories for any other purpose than to be used as evidence; also one hundred additional copies of the same, for sale by him at a price to be fixed by the Secretary of the Interior. The "usual number" shall not be printed.

Inserting "compliments" forbidden.

No report, document, or publication of any kind distributed by or from an Executive Department or bureau of the Government shall contain any notice that the same is sent with "the compliments" of an officer of the Government, or with any special notice that it is so sent, except

that notice that it has been sent, with a request for an acknowledgment of its receipt, may be given.

Publications to officials.

SEC. 74. Government publications furnished to judical and executive officers of the United States for their official use shall not become the property of these officers, but on the expiration of their official term shall be by them delivered to their successors in office and all Government publications delivered to designated depositories or other libraries shall be for public use without charge.

Foreign legations.

SEC. 75. Documents and reports may be furnished to foreign legations to the United States upon request specifying those desired and requisition made upon the Public Printer by the Secretary of State: *Provided*, That such gratuitous distribution shall only be made to legations whose Governments furnish to legations from the United States copies of their printed and legislative documents desired.

*Proviso.* Reciprocal distribution.

Coast Survey charts. R. S., sec. 4691, p. 911, amended.

SEC. 76. The charts published by the Coast and Geodetic Survey shall be sold at cost of paper and printing as nearly as practicable; and there shall be no free distribution of such charts except to the Departments and officers of the United States requiring them for public use; and a number of copies of each sheet, not to exceed three hundred, to be presented to such foreign governments, libraries, and scientific associations, and institutions of learning as the Secretary of the Treasury may direct; but on the order of Senators, Representatives, and Delegates not to exceed ten copies to each may be distributed through the Superintendent of the Coast and Geodetic Survey.

Hydrographic Office charts, etc. R. S., sec. 432, p. 72.

SEC. 77. The Secretary of the Navy is authorized to cause to be prepared at the Hydrographic Office attached to the Bureau of Navigation, in the Navy Department, maps, charts, and nautical books relating to and required in navigation, and to publish and furnish them to navigators at the cost of printing and paper, and to purchase the plates and copyrights of such existing maps, charts, navigators' sailing directions and instructions as he may consider necessary and when he may deem it expedient to do so, and under such regulations and instructions as he may prescribe.

Receipts from sales. R. S., sec. 433, p. 72, amended.

All moneys which may be received from the sale of maps, charts, and nautical books shall be paid by the Secretary of the Navy into the Treasury of the United States, to be used in the further preparation and publication of maps, charts, navigators' sailing directions, and instructions for the use of seamen, to be sold at the cost of printing and paper.

Foreign hydrographic charts. R. S., sec. 3686, p. 723.

SEC. 78. All appropriations made for the preparation or publication of foreign hydrographic surveys shall only be applicable to their object, upon the approval by the Secretary of the Navy, after a report from three competent naval officers to the effect that the original data for proposed charts are such as to justify their publication; and it is hereby made the duty of the Secretary of the Navy to

order a board of three naval officers to examine and report upon the data before he shall approve of any application of moneys to the preparation or publication of such charts or hydrographic surveys.

Illustrations in reports, etc.

SEC. 80. No document or report to be illustrated or accompanied by maps shall be printed by the Public Printer until the illustrations or maps designed therefor shall be ready for publication; and no order for public printing shall be acted upon by the Public Printer after the expiration of one year, unless the entire copy and illustrations for the work shall have been furnished within that period: *Provided*, This section shall not apply to orders heretofore made for the printing of a series of volumes on one subject.

*Proviso.* Series.

Binding.

SEC. 81. Every public document of sufficient size on any one subject shall be bound separately, and receive the title suggested by the subject of the volume, which shall be the chief title, and the classification of the volume shall be placed on the back at the bottom, as simply indicating its classification and not as a part of the title.

Classification of documents.

The executive and miscellaneous documents and the reports of each House of Congress shall be designated as "House Documents," "Senate Documents," "House Reports," "Senate Reports," thus making two classes for each House, and each volume shall receive the title suggested by its subject matter clearly placed upon its back.

Bills and resolutions, bound sets.

SEC. 82. The Public Printer shall bind four sets of Senate and House of Representatives bills, joint and concurrent resolutions of each Congress, two for the Senate and two for the House, to be furnished him from the files of the Senate and House document foom, the volumes when bound to be kept there for reference.

Committee reports.

SEC. 83. The Secretary of the Senate and Clerk of the House shall procure and file for the use of their respective Houses copies of all reports made by committees, and they are hereby directed at the close of each session of Congress to cause such reports to be indexed and bound, one copy to be deposited in the library of each House and one copy in the room of the committee from which the reports emanate.

Binding bonds, etc. R. S., sec. 3787, p. 744.

SEC. 84. Registered bonds and written records may be bound at the Treasury Department.

Franking documents.

SEC. 85. The Vice-President, Senators, Representatives, and Delegates in Congress, the Secretary of the Senate, and Clerk of the House of Representatives may send and receive through the mail all public documents printed by order of Congress; and the name of the Vice-President, Senator, Representative, Delegate, Secretary of the Senate, and Clerk of the House shall be written thereon, with the proper designation of the office he holds; and the provisions of this section shall apply to each of the persons named therein until the first day of December following the expiration of their respective terms of office.

Correspondence, etc., free.

The Vice-President, members and members-elect of and Delegates and Delegates-elect to Congress shall have the

privilege of sending free through the mails, and under their frank, any mail matter to any Government official or to any person, correspondence, not exceeding one ounce in weight, upon official or departmental business.

Work must be authorized. R. S., sec. 3785, p. 744, amended. Binding.

SEC. 86. No printing or binding shall be done at the Government Printing Office unless authorized by law. Binding for the Departments of the Government shall be done in plain sheep or cloth, except that record and account books may be bound in Russia leather, sheep fleshers, and skivers, when authorized by the head of a Department: *Provided*, The libraries of the several Departments, the Library of Congress, the libraries of the Surgeon-General's Office, the Patent Office, and the Naval Observatory may have books for the exclusive use of said libraries bound in half Turkey, or material no more expensive.

*Proviso.* Libraries, etc.

Work to be done at Printing Office. R. S., sec. 3786, p. 744, amended.

SEC. 87. All printing, binding, and blank books for the Senate or House of Representatives and for the Executive and Judicial Departments shall be done at the Government Printing Office, except in cases otherwise provided by law.

Printing, etc., for the President.

SEC. 88. The Public Printer shall execute such printing and binding for the President as he shall order and make requisitions for, and deliver to the Executive Mansion two copies each of all documents, bills, and resolutions as soon as printed and ready for distribution.

Appropriations not to be exceeded, etc.

SEC. 89. No printing shall be done for the Executive Departments in any fiscal year in excess of the amount of the appropriation, and none shall be done without a special requisition, signed by the chief of the Department and filed with the Public Printer.

Number limited.

No report, publication, or document shall be printed in excess of the number of one thousand of each in any one fiscal year without authorization therefor by Congress, except that of the annual report of the head of the Department without appendices there may be printed in any one fiscal year not to exceed five thousand copies, bound in pamphlet form; and of the reports of chiefs of bureaus without appendices there may be printed in any one fiscal year not to exceed two thousand five hundred copies, bound in pamphlet form: *Provided*, The Secretary of Agriculture may print such number of copies of the monthly crop report, and of other reports and bulletins containing not to exceed one hundred octavo pages, as he shall deem requisite; and this provision shall apply to the maps, charts, bulletins, and minor reports of the Weather Bureau, which shall be printed in such numbers as the Secretary of Agriculture may deem for the best interests of the Government: *Provided further*, That the Secretary of the Treasury may authorize the printing of the notices to mariners, tide tables' coast pilots, bulletins, and other special publications of the Coast and Geodetic Survey and of the Light-House Board, and the Secretary of the Navy may authorize the printing of the charts, maps, notices to mariners, tide tables, light lists, sailing directions, bulletins, and other special publications of the Hydrographic Office in such editions as the interests of the Government and of the public may require.

Department reports.

Bureau reports.

*Provisos.* Crop reports, etc.

Marine notices, etc.

Heads of Executive Departments shall direct whether reports made to them by bureau chiefs and chiefs of divisions shall be printed or not.

Departments to order documents required.

SEC. 90. The heads of Executive Departments, and such executive officers as are not connected with the Departments, respectively, shall cause daily examination of the Congressional Record for the purpose of noting documents, reports, and other publications of interest to their Departments, and shall cause an immediate order to be sent to the Public Printer for the number of copies of such publications required for official use, not to exceed, however, the number of bureaus in the Department and divisions in the office of the head thereof. The Public Printer shall send to each Executive Department and to each executive office not connected with the Departments, as soon as printed, five copies of all bills and resolutions, except the State Department, to which shall be sent ten copies of bills and resolutions. When the head of a Department desires a greater number of any class of bills or resolutions for official use, they shall be furnished by the Public Printer on requisition promptly made.

Limit.

Bills and resolutions.

Form, etc., of reports.

SEC. 91. The annual reports of executive officers shall be printed in the same type and form as the report of the head of the Department which it accompanies, unless otherwise ordered by the Joint Committee on Printing.

Departmental distribution.

SEC. 92. Government publications printed for or received by the Executive Departments, whether for official use or for distribution, shall be distributed by a competent person detailed to such duty in each Department by the head thereof. He shall keep an account in detail of all publications received and distributed by him. He shall prevent duplication, and make detailed report to the head of the Department, who shall transmit the same annually to Congress.

Work for Departments, etc.

SEC. 93. When any Department, the Supreme Court, the Court of Claims, or the Library of Congress shall require printing or binding to be done, it shall be on certificate that such work be necessary for the public service; whereupon the Public Printer shall furnish an estimate of the cost by the principal items for such printing or binding so called for, after which requisitions shall be made upon him therefor by the head of such Department, the Clerk of the Supreme Court, Chief Justice of the Court of Claims, or the Librarian of Congress; and the Public Printer shall place the cost thereof to the debit of such Department in its annual appropriation for printing and binding.

Estimate of cost.

Requisitions.

Restriction of printing.

SEC. 94. No head of any Executive Department, or of any bureau, branch, or office of the Government, shall cause to be printed, nor shall the Public Printer print, any document or matter except that which is authorized by law and necessary to the public business; and executive officers, before transmitting their annual reports, shall carefully examine the same and all accompanying documents, and exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall cer-

Excluding unnecessary matter.

tify in their letters transmitting such reports are necessary and relate entirely to the transaction of the public business.

Exchange of documents.

SEC. 95. Heads of Departments are authorized to exchange surplus documents for such other documents and books as may be required by them, when the same can be done to the advantage of the public service.

Postmaster-General to contract for all envelopes.

SEC. 96. The Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public, or for use by his own or other Departments, and may contract for them to be plain or with such printed matter as may be prescribed by the Department making requisition therefor: *Provided*, That no envelope furnished by the Government shall contain any business address or advertisement.

*Proviso.* Advertisements.

Judicial blanks, etc.

SEC. 97. All blanks and letter heads for use by the judges and other officials of the United States courts other than such as are required to be paid for by any of these officers out of the emoluments of their offices shall be printed at the Government Printing Office upon forms prescribed by the Department of Justice, and shall be distributed by it upon requisition.

Documents to Department, etc., libraries.

SEC. 98. The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications, in the same form as supplied to other depositories, to each of said libraries.

Dec. 21, 1879.

Impressions from vignettes, etc., in the Bureau of Engraving and Printing. Dec. 22, 1879, v. 21, p. 59.

That the Secretary of the Treasury, at the request of a Senator, Representative, or Delegate in Congress, the head of a Department, or Bureau, art association or library, be and he is hereby authorized to furnish impressions from any portrait or vignette which is now, or may hereafter be, a part of the engraved stock of the Bureau of Engraving and Printing, at such rates and under such conditions as he may deem necessary to protect the public interests.

## PUBLIC OR DEPARTMENT RECORDS.

Sec.
213. State Department records.
882. Copies of Department records and papers.
883. Transcripts from books of the Treasury in suits against delinquents.
886. Copies of records, etc., in office of Solicitor of Treasury.
887. Transcripts in indictments for embezzlement.
888. Copies of returns in returns-office.
896. Copies of consular records.
908. Little & Brown's edition of statutes.
1778. Oaths, acknowledgments.
512–515. Returns office.
5403. Destroying public records.
5408. Officer in charge destroying records.

Title 5.

Fees for copies of records. Sept. 15, 1789, s. 6, v. 1, p. 69.

SEC. 213. For making out and authenticating copies of records in the Department of State, a fee of ten cents for each sheet containing one hundred words shall be paid by the person requesting such copies, except where they are requested by an officer of the United States in a matter relating to his office.

Title 13, chap. 17.

Copies of Department records and papers.
Sept. 15, 1789, s. 5, v. 1, p. 69; Feb. 22, 1849, s. 3, v. 9, p. 347; May 31, 1854, s. 2, v. 10, p. 297.
See note 1.

SEC. 882. Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.

Copies of records, etc., in office of Solicitor of the Treasury.
Feb. 22, 1849, s. 2, v. 9, p. 347.

SEC. 883. Copies of any documents, records, books, or papers in the office of the Solicitor of the Treasury, certified by him under the seal of his office, or, when his office is vacant, by the officer acting as Solicitor for the time, shall be evidence equally with the originals.

Transcripts from books, etc., of the Treasury, in suits against delinquents.
Mar. 3, 1797, s. 1, v. 1, p. 512; Mar. 3, 1817, s. 11, v. 3, p. 367.
See note 2.

SEC. 886. When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Register and authenticated under the Seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admit-

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*Note 1.*—The heads of the Departments are not bound to produce papers or disclose information communicated to them where, in their judgment, the disclosures would, on public considerations, be inexpedient. (Op., XI, 137, Speed.)

In general, only such communications as are made in the course of their official duties by the persons making them come within the rule of privileged communications, and are confidential under all circumstances. Other cases may occur (stated in this opinion) in which a Department would be justified in representing to a court that upon public considerations it declined to furnish such communications. (Op., XV, 415, Devens, Dec. 17, 1877. See also XV, 378.)

In furnishing copies a distinction will properly be made between documents in the nature of permanent records, such as general or special orders, muster rolls, discharges of soldiers, commissions of officers, &c., and the reports and communications of officers addressed to military superiors or to the Secretary of War in the line of their official duty. The latter are generally regarded as *privileged communications* which even the courts, on grounds of public policy, will in general hold to be incompetent testimony, and of which they will refuse to require the production in evidence. (Winthrop's Digest, p. 350.)

An official memorandum indorsed on an account as a direction to his subordinates by the head of a Department is not a matter of record of which the public or persons dealing with the Department must take notice. (C. C., XIII, 72.)

All collections of natural history and the like, and all field notes and other like local information, taken or obtained by any public officer, civil or military, *in the line of his duty*, belong to the Government. They may lawfully make collections and take notes for their own use, provided the same be done without neglect of public duty or expense to the Government, and provided also that it be done without violation of superior order in their respective Departments. (Op., VI, 599, Cushing, 24 June, 1854.)

The records of an Executive Department need not be produced in evidence in court, but their contents may be shown by authenticated copies. (C. C., II, 451. Nock's case. But see Op.)

A party can not, by replevin, take papers from the public archives on the allegation of their being private property, by a writ against the head of a Department or other public officer. The archives are in the possession of the United States. (Op., VI, 8, Cushing, March 25, 1853.)

Recommendations for office are not papers or documents required to be kept by the Departments in which they are deposited—filed for the convenience of applicants who are allowed to withdraw them whenever they desire to do so. Such applicants can properly be permitted to see objections that may have been filed against themselves (subject to the limitation, however, that the permission should only be given where the communication is not in its nature privileged) in order that they may, if possible, answer or remove them. The files of the Departments ought not to be submitted to a search, upon the application of a newspaper, with a view to ascertain what persons have been recommended for office by a certain Senator and Representative in Congress. Copies of such papers should not be furnished unless the applicant appears himself to have been directly affected by the writing of a letter of which he demands a copy. (Op., 342, Devens, July 28, 1877.)

*Note 2.*—The account of a delinquent officer, as finally adjusted by the accounting officers, is not admissible as evidence under sec. 886, R. S., unless it be certified and authenticated to be a transcript from the books and proceedings of that Department. A certificate that the transcript annexed is a copy of the original on file is the form used in reference to mere copies of bonds, contracts, or other papers connected with the final adjustment. (Otto, 102, 548.)

ted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the Register, or by such Auditor, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit.

Transcripts in indictments for embezzlement of public moneys. Aug. 6, 1846, s. 16, v. 9, p. 63; Mar. 2, 1797, s. 1, v. 1, p. 512. See sec. 5494, disbursing officers.

SEC. 887. Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section.

Copies of returns in returns-office. June 2, 1862, s. 4, v. 12, p. 412. See sec. 3744, Contracts.

SEC. 888. A copy of any return of a contract returned and filed in the returns-office of the Department of the Interior, as provided by law, when certified by the clerk of the said office to be full and complete, and when authenticated by the seal of the Department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns-office.

Copies of records, etc., in office of United States consuls, etc. Jan. 8, 1869, v. 15, p. 266. See sec. 1707, Diplomatic and Consular Officers, Division IV.

SEC. 896. Copies of all official documents and papers in the office of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such officer, shall be admitted in evidence in the courts of the United States.

Little & Brown's edition of the statutes to be evidence. Aug. 8, 1846, s. 2, v. 9, p. 76.

SEC. 908. The edition of the laws and treaties of the United States, published by Little & Brown, shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.

Title 19.

Taking oaths, acknowledgments, etc. Sept. 16, 1850, v. 9, p. 458; July 29, 1854, s. 1, v. 10, p. 315.

SEC. 1778. In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by before any notary public duly appointed in any State, district, or Territory, or any of the

commissioners of the circuit courts, and when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.

Title 11, chap. 8.

Returns office. June 2, 1862, s. 4, v. 2, p. 412. See secs. 3744-3747, Contracts.

SEC. 512. The Secretary of the Interior shall from time to time provide a proper apartment, to be called the Returns Office, in which he shall cause to be filed the returns of contracts made by the Secretary of War, the Secretary of the Navy, and the Secretary of the Interior, and shall appoint a clerk of the first class to attend to the same.

Clerk to file returns. Idem.

SEC. 513. The clerk of the Returns Office shall file all returns made to the office, so that the same may be of easy access, keeping all returns made by the same officer in the same place, and numbering them in the order in which they are made.

Indexes. Idem.

SEC. 514. The clerk of the Returns Office shall provide and keep an index-book, with the names of the contracting parties, and the number of each contract opposite to the names; and shall submit the index-book and returns to any person desiring to inspect it.

Copies of returns. Idem.

SEC. 515. The clerk of the Returns Office shall furnish copies of such returns to any person paying therefor at the rate of five cents for every one hundred words, to which copies certificates shall be appended in every case by the clerk making the same, attesting their correctness, and that each copy so certified is a full and complete copy of the return.

Title 70, chap. 4.

Destroying, etc., public records. Feb. 26, 1853, s. 4, v. 10, p. 170. See sec. 5408.

SEC. 5403. Every person who willfully destroys or attempts to destroy, or, with intent to steal or destroy, takes and carries away any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, or document, or record filed or deposited in any public office, or with any judicial or public officer, shall, without reference to the value of the record, paper, document, or proceeding so taken, pay a fine of not more than two thousand dollars, or suffer imprisonment, at hard labor, not more than three years, or both.

Destroying records by officer in charge. Idem, s. 5.

SEC. 5408. Every officer having the custody of any record, document, paper, or proceeding specified in section fifty-four hundred and three, who fraudulently takes away, or withdraws, or destroys any such record, document, paper, or proceeding filed in his office or deposited with him or in his custody, shall pay a fine of not more than two thousand dollars, or suffer imprisonment at hard labor not more than three years, or both; and shall, moreover, forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

## PUBLIC PROPERTY, BUILDINGS AND GROUNDS.

### PURCHASE AND DISPOSITION.

Sec.
355. Title to be examined.
1838. Assent of legislature.
3733. Contract not to exceed appropriation.
3734. Restriction on commencing buildings.
3736. No purchase without appropriation.
5503. Contracting beyond appropriations.

Title 8.

Title to land to be purchased by the United States.
Sept. 11, 1841, res. 6, v. 5, p. 568.

SEC. 355. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.

Title 22.

Assent of States to purchase of lands for forts, etc.
Apr. 28. 1828, s. 2, v. 4, p. 264.

SEC. 1838. The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, without such consent having been obtained.

Title 42.

No contract to exceed appropriation.
July 25, 1868, s. 3, v. 15, p. 177.
See sec. 5503.

SEC. 3733. No contract shall be entered into for the erection, repair, or furnishing, of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.

Restrictions on commencement of new buildings.
July 15, 1870, v. 16, p. 296.
See sec. 3663.

SEC. 3734. Before any new buildings for the use of the United States are commenced, the plans and full estimates therefor shall be prepared and approved by the Secretary of the Treasury, the Postmaster-General, and the Secretary of the Interior; and the cost of each building shall not exceed the amount of such estimate.

Land not to be purchased except under a law.
May 1, 1820, s. 7, v. 3, p. 568.
See note 1.

SEC. 3736. No land shall be purchased on account of the United States, except under a law authorizing such purchase.

Aug. 1, 1888.

25 Stat. L., 357.
1 Supp., p. 601.
Land for public uses may be condemned by judicial process.

That in every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United

*Note 1.*—No public officer, without express authority of Congress, has a right to contract for the alienation of any property of the Government for any purpose. C. C., v. 18, p. 352. Flore's case.

See note 2.

States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so.

Jurisdiction of United States courts.

And the United States circuit or district courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.

Practice and procedure.

SEC. 2. The practice, pleadings, forms and modes of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding.

Title 70, chap. 6

Contracting beyond specific appropriation for building.
July 25, 1868, s. 5, v. 15, p. 177.
See note 3.
See sec. 3733.

SEC. 5503. Every officer of the Government who knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be punished by imprisonment not less than six months nor more than two years, and shall pay a fine of two thousand dollars.

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*Note 2.*—In addition to this act the following others appear to be in force authorizing or regulating the taking of private property for public use:

Revised Statutes, §§ 4870–4872, authorizing the Secretary of War to purchase land for national cemeteries, or obtain the same by appraisement and payment, after application to the proper circuit or district court.

1875. March 3, ch. 130, par. 2, *ante*, p. 72, authorizing the Secretary of the Treasury to acquire, by donation or purchase, the right to occupy sites for life-saving stations, &c.

1883, March 3, ch. 143, par. 1, *ante*, p. 420, authorizing the Secretary of the Treasury to acquire land for public buildings and light-houses by private purchase or condemnation, and to defray the expenses incident to the procuring of sites from the appropriations for the construction of the buildings. (See 18 Opins., 174, 484.)

1888, April 24, ch. 194, *ante*, p. 584, authorizing the Secretary of War to cause proceedings to be instituted for the condemnation of any land, right of way, or material required for the improvement of rivers and harbors, or in his discretion to purchase the same or accept donations of lands or materials.

1889, March 2, ch. 370, par. 4, *post*, p. 677, prohibiting the Commissioners of the District of Columbia from employing agents in making purchases of school sites, &c., in certain cases.

1890, August 6, ch. 724, par. 4, *post*, p. 777, extending to the Commissioners of the District of Columbia the powers conferred on the officers of the United States by the act in the text, and regulating the preparation of plans, &c., for the buildings.

1890, August 18, ch. 797, *post*, p. 780, authorizing the Secretary of War to cause proceedings to be instituted for the condemnation of any land or right pertaining thereto, for fortifications and coast defenses, or to purchase the same or accept donations of such lands or rights. (See 45 Fed. Rep., 546.)

1890, August 30, ch. 837, §§ 2, 3, *post*, p. 793, which, after providing for the acquisition of land by purchase or condemnation for the purposes of the Government Printing Office, directs that hereafter the same provisions shall apply to all cases of the taking of property in the District of Columbia for public use.

Previous to the passage of the last-named act the proceedings in the District in taking private property for public use had not been uniform. In increasing the water supply, for instance, three appraisers were to be appointed, but the owner, if dissatisfied with their valuation, might apply to the Court of Claims, (22 Stat. L., 168, 169); while on the other hand the proceedings in the acquisition of land for the Library of Congress were to be conducted (24 Stat. L., 12, 13,) "in the manner provided with reference to the taking of land for highways in the District of Columbia," the provisions as to which are contained in R. S. of D. C., §§ 252–265.

On the construction of the act in the text, see 45 Fed. Rep., 396, 19 Opins., 673. As to how far these acts are only declaratory of powers already possessed by the officers named, see 91 U. S. 367; 16 Opins., 329; 17 Opins., 509; 18 Opins., 352. As to damages recoverable in such cases, see 25 C. Cls., 87, 277, 329.

*Note 3.*—The Government can purchase land in a State without the consent of the legislature, but can not without that consent exercise exclusive jurisdiction. The joint resolutions of September 11, 1841 (Stat. L., v. 5, p. 468), do not forbid the payment of the purchase money of any site for the purpose of erecting buildings before the consent of the legislature is obtained, but prohibit the expenditure of public money upon improvements before such consent. If the legislative act of the State amounts

## USE AND CARE OF PUBLIC PROPERTY.

Sec.
197. Inventory to be kept.
1624. Willfully stranding vessels.
—— Unlawful destruction of public property.
—— Negligent stranding of vessels.
—— Waste of public property.
—— Stealing or wrongfully selling.
Act March 3, 1875. Embezzling, etc., from United States.
3748. Selling uniforms and equipments.
5385. Arson of dwelling houses.
5386. Arson of armories, etc.
5387. Arson of vessels of war.
Sec.
5438. Canceling, selling, and pledging public property.
5439. Embezzling arms, stores, etc.
5456. Robbery and larceny of personal property of the United States.
Act Mar. 3, 1883.
—— Use of water in public buildings D. C.
Act Mar. 3, 1875. Payments, etc., for public buildings.
Act June 29, 1888. Injurious deposits forbidden in New York harbor.

Title 4.

Inventories of property.

July 15, 1870, s. 1, v. 16, p. 364.

SEC. 197. The Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney-General, and Commissioner of Agriculture shall keep, in proper books, a complete inventory of all the property belonging to the United States in the build-

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to a consent, any exceptions, reservations, or qualifications contained in the act are void. (Op., X, 35, May 6, 1861, Bates. See also Op., XV, 212, Devens, Mar. 27, 1877.)

A purchase of land by the Executive without the authority of law is an illegal act. (Op., XI, 201, Speed, Apr. 20, 1865.)

Where a contract is made for the purchase of property for Government purposes, and the head of a Department refuses to take it, the Attorney-General declaring the title defective, the contract is at an end. A succeeding Secretary can not reconsider except upon new evidence, etc. (Op., IX, 100, Black, Sept. 26, 1857.)

Compensation to district attorneys for examining titles proper. The amount may be agreed on in advance or fixed after the work is completed. (Op., XI, 433, Speed, May 8, 1876. See also Op., XIII, 15.)

The discretion given in an act to acquire by purchase or condemnation a lot of land for a public building does not extend to "acquisition" of adjoining land. Authority to purchase in the act does not include authority to acquire by condemnation. In statutes, generally, the word *purchase* is employed in a sense not technical, only as acquisition by agreement with and conveyance from the owners without governmental interference. (Op., XVI, 226, Devens, May 14, 1879.) But this opinion was rendered before the passage of the act of Aug. 1, 1888, *ante;* under which authority to purchase real estate for the Government carries with it authority to condemn.

The United States can not accept a cession of jurisdiction from a State coupled with a condition that crimes committed within the limits of the jurisdiction ceded shall continue to be punished by the courts of the State. (Op., VIII, 419, Cushing.)

See Op., IX, 528, and the Regulations of the Department of Justice, published in General Orders, War Department, May 13, 1881, concerning examination and evidence of titles of lands to be conveyed to the United States.

The act of a legislature of a State giving consent to the purchase of site for naval purposes is sufficient authority for the expenditure of money in its purchase, if the title is certified to. (Op., IX, 129, Black, Nov. 23, 1877.) It is such a cession of jurisdiction that is contemplated by the joint resolution of September 11, 1848. (Op., IX, p. 263.)

The term *purchase* embraces any mode of acquiring property other than by descent. The Secretary of War can not accept a *gift* of land or interest in land, for any use or purpose, independently of statute authority. Public money can not be expended for the erection of a public building upon land *donated* to the United States, until the Attorney-General has passed the title and the legislature of the State granted jurisdiction. (Winthrop's Digest, 406. See also this Digest for other important decisions and rulings on the subject of public lands and property; and against the power of the heads of the executive departments to lease, give away, or dispose in any manner of such land or property without authority of Congress. See also Op., IV, 480.)

Where land is donated to the United States for a site for a public building, for which an appropriation was made by Congress: *Held*, That the consent of the legislature of the State to the grant is required before any part of the appropriation can be lawfully expended in the erection of the building. (Op., XVI, 414, Devens, Jan. 7, 1880.)

Lands purchased and reserved by the United States for light-house, barracks, navy-yards, and other like purposes are not included in the designation of "public lands." Lands so purchased or reserved are in law and in fact *severed* from the public domain, and no subsequent law or warrant authorizing the appropriation of "public lands" would be construed to embrace land so purchased or reserved. (Op., V, 578, Aug. 1, 1852, Crittenden.)

An act appropriating for a movable dam impliedly authorizes the purchase with the approval of the Secretary of War, of such land as is necessary for the construction of the dam. Payment of the purchase money may be made though the legislature of the State has not consented to the purchase. Expenditures for structures or improvements can not be made upon land already purchased until the consent of the State is obtained. (Op., XV, p. 212, Devens, Mar. 27, 1877.)

ings, rooms, offices, and grounds occupied by them, respectively, and under their charge, adding thereto, from time to time, an account of such property as may be procured subsequently to the taking of such inventory, as well as an account of the sale or other disposition of any of such property.

Title 15, chap. 16.

Offenses punishable by death.

SEC. 1624. ART. 4. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

* * * * * * *

Willful stranding or injury of vessel.

Tenth. Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

Unlawful destruction of public property.

Apr. 23, 1800, art. 17, v. 3, p. 47.

Eleventh. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

Offenses punishable at discretion of court-martial.

ART. 8. Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy—

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Negligent stranding.

Eleventh. Or through inattention or negligence, suffers any vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded;

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Waste of public property, etc.

Apr. 23, 1800, art. 13, v. 2, p. 47.

Fifteenth. Or wastes any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste;

Crimes of fraud.

ART. 14. Fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States—

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Stealing, wrongfully selling, etc.

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully and knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of the United States, furnished or intended for the military or naval service thereof; or

Buying public military property.

Mar. 2, 1863, s. 1, v. 12, p. 565.

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same;

Mar. 3, 1875.

Embezzling, stealing, etc., from United States deemed felony; penalty.

That any person who shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be deemed guilty of felony, and on conviction thereof before the district or circuit court of the United States in the district wherein said offense may have been committed, or into which he shall carry or have in possession of said property so embezzled, stolen, or purloined, shall be punished therefor by imprisonment at hard labor in the penitentiary not exceeding five years,

or by a fine not exceeding five thousand dollars, or both, at the discretion of the court before which he shall be convicted.

Knowingly receiving, concealing, etc., stolen, etc., property of the United States; penalty.

SEC 2. That if any person shall receive, conceal, or aid in concealing, or have, or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined from the United States by any other person, knowing the same to have been so embezzled, stolen, or purloined, such person shall, on conviction before the circuit or district court of the United States in the district wherein he may have such property, be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor in the penitentiary not exceeding five years, one or both, at the discretion of the court before which he shall be convicted; and such receiver may be tried either before or after the conviction of the principal felon, but if the party has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against such receiver that the property of the United States therein described has been embezzled, stolen, or purloined.

May be tried before or after conviction of principal. Mar. 3, 1875, v. 18, p. 479.

Title 44.

Uniforms and equipments. Mar. 3, 1863, s. 23, v. 12, p. 735.

SEC. 3748. The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a soldier, or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits or accouterments, so furnished, and which have been the subjects of any such sale, barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein; but the same may be seized and taken wherever found by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster, or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift.

Title 70, chap. 3.

Arson of dwelling-house within a fort, etc. Mar. 3, 1825, s. 1, v. 4, p. 115.

SEC. 5385. Every person who, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is under the jurisdiction of the United States, or on the site of any light-house, or other needful building belonging to the United States, the site whereof is under their jurisdiction, willfully and maliciously burns any dwelling-house, or mansion-house, or any store, barn, stable, or other building, parcel of any dwelling or mansion-house, shall suffer death.

Arson of armory, arsenal, etc. Ibid, s. 2.

SEC. 5386. Every person who, in any of the places mentioned in the preceding section, maliciously sets fire to, or burns, any arsenal, armory, magazine, rope-walk, ship-house, warehouse, block-house, or barrack, or any store-house, barn, or stable, not parcel of a dwelling-house, or any other building not mentioned in such section, or any vessel built, or begun to be built, or repairing, or any light-

house, or beacon, or any timber, cables, rigging, or other materials for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than ten years.

Arson of vessel of war. Ibid, s.11, p.117.

SEC. 5387. Every person who maliciously sets on fire, or burns, or otherwise destroys, any vessel of war of the United States, afloat on the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, shall suffer death.

Title 70, chap. 5.

Concealing, selling, and pledging public property, etc. Mar. 2, 1863, ss. 1-3, v. 12, pp. 696-698. See secs. 3490, 3491, under Claims.

SEC. 5438. Every person * * * who, having charge, possession, custody, or control of any money or other public property used, or to be used, in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

Embezzling arms, stores, etc. Ibid.

SEC. 5439. Every person who steals or embezzles, or knowingly applies to his own use, or who unlawfuly sells, conveys, or disposes of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section.

Robbery or larceny of personal property of the United States. Mar. 2, 1867, v. 14, p. 557.

SEC. 5456. Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one nor more than ten years, or by both such fine and imprisonment.

Mar. 3, 1883.

Flow of water to be shut off. [Sundry civil act.]

All officers in charge of public buildings in the District of Columbia shall cause the flow of water in the buildings under their charge to be shut off from five o'clock post meridian to eight o'clock ante meridian: *Provided*, That the water in said public buildings is not necessarily in use for public business.

Mar. 3, 1875.

Ch. 130, v. 18, p. 395.

Payments, contracts, etc., for public buildings. See note 1.

And hereafter no money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor; and no money shall be expended upon any public building on which work has not yet been actually begun until after drawings and specifications together with detailed estimates of the cost thereof, shall have been made by the Supervising Architect of the Treasury Department, and said plans and estimates shall have been approved by the Secretary of the Treasury, Secretary of the Interior, and the Postmaster-General; and all appropriations made for the construction of such building shall be expended within the limitations of the act authorizing the same or limiting the cost thereof; and no change of said plan involving an increase of expense exceeding ten per centum of the amount to which said building was limited shall be allowed or paid by any officer of the Government without the special authority of Congress.

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*Note 1.*—The Secretary of the Navy has no authority to grant permission to a city to extend a sewer through the public grounds so as to confer any legal title or right upon the city to maintain the sewer through the grounds. A mere license for the use of the premises is revocable at all times. A legal right to construct and maintain a sewer would have to be granted by Congress. (Op., XVI, 152, Oct. 1, 1878, Devens.)

Territory over which exclusive jurisdiction has been ceded to the United States is subject only to the laws of Congress. Where land is granted by a State to the General Government, reserving a concurrent jurisdiction in executing process within for offenses committed without such tract, the United States have exclusive jurisdiction of offenses committed within the ceded territory. The purchase of land by the General Government for public purposes within the territorial limits of a State, does not, of itself, oust the State jurisdiction therein. Exclusive jurisdiction is the necessary attendant on exclusive legislation. When, therefore, a State legislature has given its consent to a purchase of land by the General Government for the purposes enumerated in the Constitution, the State jurisdiction is completely ousted. (Brightley's Federal Digest, pp. 147, 148, giving numerous authorities and decisions of the courts.)

An officer in command of a military post has the right to protect it by force from occupation or injury at the hands of trespassers. One caution should be observed, however, that in executing this duty there should be no unnecessary or wanton harm done either to persons or property. (Op., IX, 476, Black, Sept. 24, 1860.)

Where the Government executes a lease with a full knowledge of the condition of the building leased and with no agreement that the lessor shall make repairs it can not make them at his expense. (C. C., IV, 526.)

Premises occupied by the Government under an implied lease; claim presented, which is *reduced* and paid, owner accepting and receipting without protest. He is excluded from afterward seeking to recover the difference. (C. C., VIII, 521.) Where there is an express agreement to repair, tenant is liable for loss by accidental fire. Liability attaches although there be no express covenant as to fire. Otherwise where there is no agreement to keep in repair (C. C., IX, 479). Premises rented at a specific rate per month, after expiration of a year lessee notified lessor that the rent must be reduced. The lessor allows the lessee to continue, receiving monthly rent at the reduced rate and giving receipts therefor in full. He thereby consents to change in the original contract (C. C., V, 508.)

Where the President has given permission to a railroad or a telegraph company to run lines through the public property, the license is revocable at his pleasure. (Op., XVI, 205, Devens, Nov. 22, 1878.)

Persons who reside on lands purchased by or ceded to the United States, forts and arsenals, and where there is no other reservation or jurisdiction to the State than that of a right to serve civil and criminal process on such lands, are not entitled to the benefits of common schools for their children in the towns in which the lands are situated; nor are they liable to be assessed for their polls and estates to State, county, and town taxes in such towns; nor do they gain a settlement in such towns for themselves or their children by a residence for any length of time on such lands; nor do they acquire by residing on such lands any elective franchise as inhabitants of such towns. (Supreme court of Massachusetts, 1 Metcalf, 580, quoted in Op., XVI, 468, Devens, Feb. 7, 1880.)

June 29, 1888.

25 Stat. L., 209. Supp. R. S., pp. 594-595.

New York Harbor.

Injurious deposits forbidden. May 16, 1888, ch. 257; Sept. 19, 1890, ch. 907, s. 6; 45 Fed. Rep., 380.

That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden,

How punished

And every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.

Punishment of master or engineer of vessel towing scow, etc., loaded with prohibited matter.

SEC. 2. That any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent, or tributary waters, or in those of Long Island Sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor hereinafter mentioned, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted.

Permit to transport matter to dumping ground.

SEC. 3. That in all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, it shall be the duty of the owner or master, or person acting in such capacity, on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, to apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made;

Deviation from permit, a misdemeanor.

19 Opins., 317.

And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor within the meaning of this act; and the master and engineer, or person or persons acting in such capacity, on board of any tow-boat towing such scows or boats, shall be equally guilty of such offense with the master or person acting in the capacity of master of the scow, and be liable to equal punishment.

Disposal of dredged matter.

SEC. 4. That all mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in the harbor of

New York, or the waters adjacent or tributary thereto, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise.

Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section.

Legal proceedings.

Any boat or vessel used or employed in violating any provision of this act, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against, summarily by way of libel in any district court of the United States, having jurisdiction thereof.

Line officer of Navy to be appointed supervisor of harbor. See "Line officers of the Navy," sec. 1362.

SEC. 5. That a line officer of the Navy shall be designated by the President of the United States as supervisor of the harbor, to act under the direction of the Secretary of War in enforcing the provisions of this act, and in detecting offenders against the same. This officer shall receive the sea-pay of his grade, and shall have personal charge and supervision under the Secretary of War, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of this act.

SEC. 6. [*Appropriates $30,000 to carry out the act.*]

## SALE OF PROPERTY AND MATERIALS.

Sec.
1540. Sale of vessels unfit for repairs.
1541. Sale of unserviceable vessels and materials.
Act Aug. 5, 1882. Removal of vessels from Register.
Ibid. Appraisal and sale of stores, etc.
3617. Moneys to be deposited without deduction.
3618. Proceeds of sales of material.
Sec.
Act Feb. 14, 1879. Value of issues of small stores, etc.
Act June 30, 1890. Sale of condemned naval stores.
3619. Penalty for withholding money.
3672. Statement of proceeds of sales.
—— Disposition of useless ordnance material.

Title 15, chap. 6.

Sale of vessels unfit to be repaired. Apr. 21, 1806, s. 3, v. 2, p. 402.

SEC. 1540. The President may direct any armed vessel of the United States to be sold when, in his opinion, such vessel is so much out of repair that it will not be for the interest of the United States to repair her. [See Aug. 5, 1882.]

Sale of unserviceable vessels and materials. Mar. 23, 1872, s. 2, v. 17, p. 154.

SEC. 1541. The Secretary of the Navy is authorized and directed to sell, at public sale, such vessels and materials of the United States Navy as, in his judgment, cannot be advantageously used, repaired, or fitted out; and he shall,

See sec. 3618 and Aug. 5, 1882, same title; sec. 429, Navy Department, Division III; and sec. 1541, vessels of the Navy, Division I.

at the opening of each session of Congress, make a full report to Congress of all vessels and materials sold, the parties buying the same, and the amount realized therefrom, together with such other facts as may be necessary to a full understanding of his acts.

Aug. 5, 1882.

Examination of vessels, etc.

It shall also be the duty of the Secretary of the Navy, as soon as may be after the passage of this act, to cause to be examined by competent boards of officers of the Navy, to be designated by him for that duty, all vessels belonging to the Navy not in actual service at sea, and vessels at sea as soon as practicable after they shall return to the United States, and hereafter all vessels on their return from foreign stations, and all vessels in the United States as often as once in three years, when practicable; and said boards shall ascertain and report to the Secretary of the Navy, in writing, which of said vessels are unfit for further service, or, if the same are unfinished in any navy-yard, those which cannot be finished without great and disproportionate expense, and shall in such report state fully the grounds and reasons for their opinion. And it shall be the duty of the Secretary of the Navy, if he shall concur in opinion with said report, to strike the name of such vessel or vessels from the Navy Register and report the same to Congress.

Vessels not fit for further service to be stricken from Register.

See Mar. 3, 1883, vessels of the Navy, Division I.

Aug. 5, 1882.

Account of stores to be taken.

See note 1.

SEC. 2. That it shall be the duty of the Secretary of the Navy, as soon as may be after the passage of this act, to cause an account to be taken of the stock of stores and supplies pertaining and belonging to the several bureaus of the Navy Department, in which account shall be stated the original cost of each article and the date of purchase, so far as the same is known, and cause an appraisement of the present value of such stores and supplies to be made and entered in such account; and said appraised value, when so entered, shall hereafter be the price at which they shall be charged in accounting with the several bureaus. Such appraisal shall be made by boards of officers of the Navy to be designated by the Secretary; and all such stores and supplies as shall be found by boards of appraisers to be unserviceable for use in the Navy, shall be condemned and sold in the manner hereinafter provided for the sale of old

Appraisers.

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Duty of Secretary of the Treasury.

*Note 1.*—Sec. 3755 of the Revised Statutes (resolution of June 21, 1870, v. 16, p. 380) authorizes the Secretary of the Treasury to make such contracts and provisions as he may deem for the interest of the Government for the preservation, sale, or collection of any property, or the proceeds thereof, which may have been wrecked, abandoned, or become derelict, being within the jurisdiction of the United States, and which ought to come to the United States, * * * [But see following.]

Duty of the Secretary of War.

An act approved June 14, 1880 (sec. 4, chap. 211, v. 21, p. 197), provides that "whenever hereafter the navigation of any river, lake, harbor, bay, or other navigable water of the United States, shall be obstructed or endangered by any sunken vessel or water-craft, it shall be the duty of the Secretary of War, upon satisfactory information thereof, to cause reasonable notice of not less than thirty days to be given, personally or by publication at least once a week in the newspaper published nearest the locality of such sunken vessel or craft, to all persons interested in such vessel or craft, or in the cargo thereof, of the purpose of said Secretary, unless such vessel or craft shall be removed as soon thereafter as practicable by the parties interested therein, to cause the same to be removed." If not removed, the Secretary treats the same as abandoned and derelict, and proceeds to remove it, sells it to the highest bidder for cash, after due notice, and deposits the proceeds in the Treasury to the credit of a fund for the removal of such obstructions to navigation. The provisions of this act apply to all such wrecks whether removed under this or any other act of Congress.

An act of August 2, 1882 (chap. 375, v. 22, p. 208), enlarges the power given the Secretary of War by the act of June 14, 1880, so that he may, in his discretion, sell and dispose of any such vessel, or cargo, or property therein, before the raising or removal thereof.

materials, and the proceeds thereof, after deducting the cost of such appraisal, condemnation, and sale, shall be paid into the Treasury. And no old material of the Navy shall hereafter be sold or exchanged by the Secretary of the Navy, or by any officer of the Navy, which can be profitably used by reworking or otherwise in the construction or repair of vessels, their machinery, armor, armament, or equipment; but the same shall be stored and preserved for future use. And when any such old material cannot be profitably used as aforesaid, the same shall be appraised and sold at public auction after public notice and advertisement shall have been given according to law under such rules and regulations and in such manner as the said Secretary may direct. The net proceeds arising from the sales of such old materials shall be paid into the Treasury. It shall be the duty of the Secretary of the Navy annually to report in detail to Congress, in his annual report, the proceeds of all sales of materials, stores, and supplies, made under the provisions of this act, and the expenses attending such sales.

Sale of unprofitable articles.

Report to be made to Congress.

Aug. 5, 1882, ch. 391, 22 Stat. L., p. 296.

Title 40.

SEC. 3617. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

Moneys to be deposited without deduction.

Mar. 3, 1849, s. 1, v. 9, p. 398; Sept. 28, 1850, s. 3, v. 9, p. 507.

See Aug. 5, 1882, and Mar. 3, 1883.

SEC. 3618. All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army, or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law.

Proceeds of sales of material.

May 3, 1872, s. 5, v. 17, p. 83; Mar. 3, 1847, s. 1, v. 9, p. 171; Apr. 20, 1866, ss. 1, 2, v. 14, p. 40; July 28, 1866, s. 25, v. 14, p. 336; June 8, 1872, v. 17, p. 337; June 22, 1874, v. 18, p. 200; Feb. 7, 1877, v. 19, p. 249.

See s. 1541. Aug. 5, 1882, and Mar. 3, 1875.

Feb. 14, 1879.

[*Par.* 1.] Bureau of Provisions and Clothing. That from and after the first day of April, eighteen hundred and seventy-nine, the value of issues of small-stores shall be credited to a fund to be designated as the "small-stores fund", in the same manner as the value of the issues of clothing is now credited to the "clothing fund"; the resources of the fund to be used hereafter in the purchase of supplies of small-stores for issue. * *

20 Stat. L., 284. Supp. R. S., pp. 216-217.

Title changed to Bureau of Supplies and Accounts.

Value of issues of small stores to be credited to "small-stores fund;" how used.

R. S., sec. 3618. June 30, 1890, ch. 640, par. 2, p. 762.

June 30, 1890.

[*Par.* 1.] The Secretary of the Navy is hereby authorized to sell, after advertisement of the sale for such time as in his judgment the public interests may require, condemned

26 Stat. L., 189. Supp. R. S., 1874-91, p. 762.

Sale of condemned naval stores.
R. S., 1541, 3618; 19 C. Cls., 181; 113 U. S., 128.

naval supplies, stores, and materials, either by public auction or by advertisement for sealed proposals for the purchase of the same.

Penalty for withholding money.
July 18, 1866, s. 40, v. 14, p. 187.

SEC. 3619. Every officer or agent who neglects or refuses to comply with the provisions of section thirty-six hundred and seventeen shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled.

Title 41.

Statement of process of sales of old material.
May 8, 1872, s. 5, v. 17, p. 83; Feb. 27, 1877, v. 19, p. 249.
See sec. 3692, Appropriations.

SEC. 3672. A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law, shall be included in the appendix to the book of estimates.

Mar. 3, 1875.

Disposition of ordnance material.
Mar. 3, 1875, v. 18, p. 343.
See note 2.

That the Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale, according to law, the net proceeds of which shall be turned into the Treasury; and an amount equal to the same is hereby appropriated, to be applied to the purpose of procuring a supply of material adapted in manufacture and calibre to the present wants of the service; but there shall be expended, under this provision, not more than seventy-five thousand dollars in one year.

18 Stat. L., 371.
Supp. R. S., p. 73, chap. 130.
See note 3.

[*Par.* 11.] That the Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale, according to law;

July 14, 1884.

23 Stat. L., 158.
Supp. R. S., 1874-91, p. 468.
All rifled cannon made at cost of United States to be tested.
July 26, 1886, ch., 781, s. 1, p. 502.
Sept. 22, 1888, ch. 1028, s. 1, p. 619.

SEC. 2. That hereafter all rifled cannon of any particular material, caliber, or kind, made at the cost of the United States shall be publicly subjected to the proper test including such rapid firing as a like gun would be likely to be subjected to in actual battle for the determination of the endurance of the same to the satisfaction of the President of the United States or such persons as he may select; and he is hereby authorized to select not to exceed five persons, who shall be skilled in such matters; and if such gun shall not prove satisfactory, they shall not be put in use in the Government service.

Smooth-bore cannon may be sold for experimental purposes.
Mar. 3, 1875, ch. 130, par. 11, p. 74.

SEC. 3. That the Secretary of War and the Secretary of the Navy are hereby authorized to sell to projectors of methods of conversion, for experimental purposes only, any smooth-bore cannon on hand required by them, at prices which shall not be less than have been received from auction sales for such articles, and deliver the same, at the cost of the Government, at the nearest convenient place for

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*Note 2.*—The Secretary of the Navy can not exchange a condemned vessel for another. Disposition of former controlled by act of May 23, 1872. (Op., XIV, 369, Feb. 18, 1874, Williams.)

For the mode in which the sales of condemned property shall be conducted, whether by advertisement at public auction or otherwise, no specific provision is made. In these respects the sales are left to the discretion of the officer having charge of such old material. The proceeds must be covered into the Treasury. The Bureau of Engraving and Printing can not exchange old presses for new ones. (Op., XV, 320, Williams, June 23, 1877.)

Inspection, condemnation, and public sale are necessary to a valid sale of unsanitable military stores under the act of March 3, 1825. (C. C., v. 1, p. 85.)

*Note 3.*—The authority given to the Secretary of the Navy in paragraph 11 to dispose of public property is superseded by 1882, Aug. 5, chap. 391, sec. 2.

shipment or public transportation; the cost of delivery to be deducted from the proceeds of sales, and the balance to be covered into the Treasury of the United States.

One or more rifled cannon of each type constructed at the cost of the United States for the Navy shall be publicly subjected to the proper test for endurance including such rapid firing as a like gun would be subjected to in battle. This test shall be under the direction and to the satisfaction of the Secretary of the Navy, and if such guns do not prove satisfactory, the type they represent shall not be put in use in the naval service.

July 26, 1886.
24 Stat. L., 149.
Supp. R. S., 1874–91, p. 502.
Navy.
Rifled cannon of each type to be tested.
July 5, 1884, ch. 235, s. 2, p. 468.

## REVISED STATUTES—STATUTES AT LARGE.

### GENERAL PROVISIONS.

Sec.
1. Definitions.
2. County.
3. Vessel.
4. Vehicle.
5. Company, association.
6. Seal.

In determining the meaning of the Revised Statutes, or of any act or resolution of Congress passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to females; the words "insane person" and "lunatic" shall include every idiot, non-compos, lunatic, and insane person; the word "person" may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an "oath" shall be deemed complied with making affirmation in judicial form.

Title 1, chap. 1.
Definitions.
Feb. 25, 1871, s. 2, v. 16, p. 431; July 13, 1866, s. 44, v. 14, p. 163; June 30, 1864, ss. 82, 126, v. 13, pp. 258, 287; July 20, 1868, s. 104, v. 15, p. 166.

SEC. 2. The word "county" includes a parish, or any other equivalent subdivision of a State or Territory of the United States.

County.
July 13, 1866, s. 9, v. 14, pp. 98; 110.

SEC. 3. The word "vessel" includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Vessel.
July 18, 1866, s. 1, v. 14, p. 178; June 29, 1870, s. 7, v. 16, p. 170.

SEC. 4. The word "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

Vehicle.
July 18, 1866, s. 1, v. 14, p. 178.

SEC. 5. The word "company" or "association," when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association," in like manner as if these last-named words, or words of similar import, were expressed.

Company, association.
July 25, 1866, s. 9, v. 14, p. 241.

SEC. 6. In all cases where a seal is necessary by law to any commission, process, or other instrument provided for by the laws of Congress, it shall be lawful to affix the proper seal by making an impression therewith directly on the paper to which such seal is necessary; which shall be as valid as if made on wax or other adhesive substance.

Seal.
May 31, 1854, s. 2, v. 10, p. 297.

## FORM OF STATUTES AND EFFECT OF REPEALS.

Sec.
7. Enacting clause.
8. Resolving clause.
9. No enacting words after first section.
10. Numbering and frame of sections.
11. Title of appropriation acts.
12. Repeal not to revive former act.
13. Repeals not to affect liabilities, unless, etc.

Title 1, chap. 2.

Enacting clause.

SEC. 7. The enacting clause of all acts of Congress hereafter enacted shall be in the following form: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled."

Resolving clause.

SEC. 8. The resolving clause of all joint resolutions shall be in the following form: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled."

No enacting words after first section.

SEC. 9. No enacting or resolving words shall be used in any section of an act or resolution of Congress except in the first.

Numbering and frame of sections.
Feb. 25, 1871, s. 1, v. 16, p. 431.

SEC. 10. Each section shall be numbered, and shall contain, as nearly as may be, a single proposition of enactment.

Title of appropriation acts.
Aug. 26, 1842, s. 2, v. 5, p. 537.

SEC. 11. The style and title of all acts making appropriations for the support of Government shall be as follows: "An act making appropriations (here insert the object) for the year ending June thirtieth (here insert the calendar year.)

Repeals not to revive former act.
Feb. 25, 1871, s. 3, v. 16, p. 432.

SEC. 12. Whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided.

Repeals not to affect liabilities unless, etc.
Ibid., s. 4.

SEC. 13. The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

Title 19.

Preservation of copies of Statutes at Large.
Aug. 8, 1846, s. 1, v. 9, p. 75.

SEC. 1777. The various officers of the United States, to whom, in virtue of their offices and for the uses thereof, copies of the United States Statutes at Large, published by Little, Brown and Company, have been or may be distributed at the public expense, by authority of law, shall preserve such copies, and deliver them to their successors respectively as a part of the property appertaining to the office. A printed copy of this section shall be inserted in each volume of the Statutes distributed to any such officers.

## LIMITATIONS.

Sec.
1043. Capital offenses.
1044. Offenses not capital.
1045. Fleeing from justice.
1046. Crimes under the revenue laws.
1047. Penalties and forfeitures under laws of the United States.
1048. Parties beyond reach of process during the rebellion.

Title 13, chap. 19.

Capital offenses.
Apr. 30, 1790, s. 32, v. 1, p. 119.

SEC. 1043. No person shall be prosecuted, tried, or punished for treason or other capital offense, willful murder excepted, unless the indictment is found within three years

next after such treason or capital offense is done or committed.

Offenses not capital.

SEC. 1044. No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed; but this act shall not have the effect to authorize the prosecution, trial, or punishment for any offense, barred by the provisions of existing law.

Fleeing from justice.
Ibid.
Apr. 30, 1876, v. 19, p. 32.

SEC. 1045. Nothing in the two preceding sections shall extend to any person fleeing from justice.

Crimes under the revenue laws.
Mar. 26, 1804, s. 3, v. 2, p. 290; Apr. 20, 1818, s. 9, v. 3, p. 452.

SEC. 1046. No person shall be prosecuted, tried, or punished for any crime arising under the revenue laws, or the slave-trade laws of the United States, unless the indictment is found or the information is instituted within five years next after the committing of such crime.

Penalties and forfeitures under laws of United States.
Feb. 28, 1839, s. 4, v. 5, p. 322; Mar. 2, 1799, s. 89, v. 1, p. 695; Mar. 26, 1804, s. 3, v. 2, p. 290; Apr. 20, 1818, s. 9, v. 3, p. 452; Mar. 3, 1863, s. 14, v. 12, p. 741; July 25, 1868, s. 1, v. 15, p. 183.

SEC. 1047. No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: *Provided*, That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property.

Parties beyond reach of process during the rebellion.
June 11, 1864, ch. 118, v. 13, p. 123.

SEC. 1048. In all cases where, during the late rebellion, any person could not, by reason of resistance to the execution of the laws of the United States, or of the interruption of the ordinary course of judicial proceedings, be served with process for the commencement of any action, civil or criminal, which had accrued against him, the time during which such person was beyond the reach of legal process shall not be taken as any part of the time limited by law for the commencement of such action.

That the Articles for the Government of the Navy be, and the same are hereby, amended by adding thereto the following:

"ARTICLE 61. No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself, or of some other manifest impediment he shall not have been amenable to justice within that period.

"ARTICLE 62. No person shall be tried by court-martial or otherwise punished for desertion in time of peace committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States, or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the

time of his absence shall be excluded in computing the period of the limitation:

"*Provided*, That said limitation shall not begin until the end of the term for which said person was enlisted in the service." (February 25, 1895.)

## REPEAL PROVISIONS.

Sec.
5595. What Revised Statutes embrace.
5596. Repeal of acts embraced in revision.
5597. Accrued rights reserved.
5598. Prosecutions and punishments.
5599. Acts of limitation.
5600. Arrangement and classification of sections.
5601. Acts passed since December 1, 1873, not affected.
—— Act June 20, 1874. Preparation of Revised Statutes for printing, etc.

Title 74.

What Revised Statutes embrace.

SEC. 5595. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the 1st day of December one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as The Revised Statutes of the United States.

Repeal of acts embraced in revision.

SEC. 5596. All acts of Congress passed prior to said first day of December one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local, or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision, shall not be affected or changed by its enactment.

Accrued rights reserved.

SEC. 5597. The repeal of the several acts embraced in said revision, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall said repeal, in any manner affect the right to any office, or change the term or tenure thereof.

Prosecutions and punishments.

SEC. 5598. All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made.

Acts of limitation.

SEC. 5599. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings or prosecu-

tions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

Arrangement and classification of sections.

SEC. 5600. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed.

Acts passed since Dec. 1, 1873, not affected. June 22, 1874.

SEC. 5601. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

Title 5.

Promulgation of laws. Sept. 15, 1789, s. 2, v. 1, p. 68; July 7, 1838, v. 5, p. 302; Dec. 28, 1874, ch. 9, v. 18, p. 294.

SEC. 204. Whenever a bill, order, resolution or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Secretary of State from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Secretary of State from the President of the Senate, or Speaker of the House of Representatives in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals.

June 20, 1874.

Preparation of Revised Statutes for printing, etc.

That the Secretary of State is hereby charged with the duty of causing to be prepared for printing, publication and distribution the revised statutes of the United States enacted at this present session of Congress; that he shall cause to be completed the head notes of the several titles and chapters and the marginal notes referring to the statutes from which each section was compiled and repealed by said revision; and references to the decisions of the courts of the United States explaining or expounding the same, and such decisions of State courts as he may deem expedient, with a full and complete index to the same. And when the same shall be completed, the said Secretary shall duly certify the same under the seal of the *Department of State*, and when printed and promulgated as hereinafter provided, the printed volumes shall be legal evidence of the laws and treaties therein contained, in all the courts of the United States, and of the several States and Territories.

Certification by Secretary of State; printed copies to be evidence.

Title of revision. June 20, 1874, s. 2, v. 18, p. 113; Dec. 28, 1874, s. 1, v. 18, p. 283.

Revision relating to the District. June 20, 1874, s. 3, v. 18, p. 113.

That the revision of the statutes of a general and permanent nature, with the index thereto, shall be printed in one volume, and shall be entitled and labeled "Revised Statutes of the United States"; and the revision of the

statutes relating to the District of Columbia; to post-roads, and the public treaties in force on the first day of December, one thousand eight hundred and seventy-three, with a suitable index to each, shall be published in a separate volume, and entitled and labeled "Revised Statutes relating to District of Columbia and Post-Roads. Public treaties."

To be stereotyped, etc. Distribution and sale. Idem, s. 4. See note 1.

That the Secretary of State shall cause the two volumes to be stereotyped and such number of each volume to be printed and substantially bound at the Government Printing Office as he may deem needful, for public distribution as hereinafter provided, and for sale by his office.

Act March 15, 1898. U. S. Statutes sold by Supt. Documents. See p. 238.

SEC. 4. Hereafter the Secretary of State shall cause to be delivered to the Superintendent of Documents the Revised Statutes, supplements thereto, session laws, and Statutes at Large, to supply deficiencies, and to be sold by him under the provisions of section sixty-one of the Act approved January twelfth, eighteen hundred and ninety-five, entitled "An Act providing for the public printing and binding and distribution of public documents."

[The statutes of the United States are edited, printed, stereotyped and distributed, in accordance with law, under the direction of the Secretary of State. They are sold at the cost of the paper, presswork, and binding, with ten per cent added thereto, to any person applying for the same.

Under section 8 of the act of Congress approved June 20, 1874, vol. 18, p. 113, the printed copies of the acts of Congress, as edited and

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*Note 1.*—Whenever a power is given by a statute everything necessary to the making of it effectual or requisite to attain the end is implied. (1 Kent's Com., 464; Quoted in Op., XV, p. 213.)

Where power is given by a statute to public officers in permissive language, as they "may if deemed advisable" do certain thing, the language used will be regarded as peremptory when the public interests or individual rights require that it should be. (Wallace, S. C., IV, p. 709.)

Where a statute imposes a particular duty on an executive officer and he has acted (performing the duty to his understanding of the statute) there is no appeal from his action to the President or to any other executive officer, unless such appeal is provided for by law. (Op., XVI, 317, Devens, May 2, 1879.)

When the intent and meaning of a statute is expressly declared by a provision therein, to carry out that intent all other parts of the act must yield. A proviso in an act "repugnant to the purview thereof is not void, but stands as the last expression of the legislative will." (Op., XV, p. 74. Quotes Farmers' Bank *v.* Hale, 59 N. Y., 53.)

A general repealing clause, such as is often introduced at the close of enactments, may make the legislative intent clearer, but it is not necessary to give effect to the legislation otherwise expressed. (C. C., XX, 323. *Fisher's* case.)

A later statute, in the affirmative and general, does not take away a former act which is particular and special. Sundry cases cited. (Op., VI, p. 45, Cushing.)

An earlier law is never to be taken as repealed by a later, without words to that effect, unless they be so inconsistent that both cannot stand together. (Op., IX, p. 48, Black.) The earlier is never abrogated by the later unless the two are so flatly repugnant that they can not possibly stand together. Any reasonable interpretation is to be adopted which may be necessary to prevent one from interfering with the other. (Idem, p. 122.)

No statute, however positive in terms, is to be construed as designed to interfere with existing rights of action or vested rights unless the intention that it should so operate is expressly declared or necessarily implied. (C. C., IX, p. 106, S. C., Wallace, XX, p. 179.)

A statute may not be repealed, yet its subject-matter may expire and the act become inoperative. (C. C., III, 152, Wallace, 62.)

In all statute law, the *particular* provision, especially whenever subsequent, restrains and modifies the general. (Op., IV, p. 182.)

In construing statutes aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted. (S. C., Otto, 99, p. 48.)

The principle is well settled that statutes are to be construed as operative prospectively only, unless their language clearly and imperatively demands that retrospective effect shall be given them. (Op., XV, pp. 222, 259.) A retroactive effect, especially when it would be a violation of contracts, is not to be given to the words of a statute unless they are too express to admit of any other interpretation. (Op., IV, p. 141.)

No effect can be given by the judiciary to an act of Congress which seeks to declare retrospectively the legal effect to be given to other statutes. (C. C., VII, 109 Wallace, VIII, 330.)

Every law is presumed to be prospective in its operation unless the *contrary* clearly appears. (Op., XV, 183.)

printed and issued under the direction of the Secretary of State, are "legal evidence of the laws and treaties therein contained, in all the courts of the United States and of the several States therein."

The sixth section of the act of Congress approved June 20, 1874, provides for the distribution to the Navy Department, including those for the use of the officers of the Navy, of one hundred copies of the pamphlet edition of the acts and resolves of Congress at the close of each session; and the seventh section of the same act provides for distribution of the bound copies of the Statutes at Large for each Congress as follows: "To the Navy Department, including a copy for the library at the Naval Academy at Annapolis, a copy for the library of each navy-yard in the United States, a copy for the library of the Brooklyn Naval Lyceum, and a copy for the library of the Naval Institute at Charlestown, Mass., sixty-five copies." * * *

Joint Resolution No. 22, approved May 22, 1878, v. 20, p. 251, provided for the distribution of the second edition of the Revised Statutes recently printed: To the "Navy Department, including three copies for the library of the Naval Academy at Annapolis, a copy for the library of each navy-yard in the United States, a copy for the Brooklyn Naval Lyceum, and a copy for the library of the Naval Institute at Charlestown, Mass., seventy copies."

Joint Resolution No. 44, approved June 7, 1880, v. 21, p. 308, provides for the publication, sale, and distribution of a "supplement to the Revised Statutes." This supplement is "to be taken to be prima facie evidence of the laws therein contained in all the courts of the United States and of the several States and Territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress: *Provided*, That nothing herein contained shall be construed to change or alter any existing law."

The acts approved March 2, 1877, chap. 82, s. 4, v. 19, p. 268, and March 9, 1878, chap. 26, v. 20, p. 27, provide that after the second edition of the Revised Statutes is certified to under the seal of the Secretary of State and when printed and promulgated "shall be legal evidence of the laws therein contained, in all the courts of the United States, and of the several States and Territories, but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three."]

## DIVISION IV.

## MISCELLANEOUS.

### BRIBES, CONTRIBUTIONS, PRESENTS, ETC.

Sec.
1546. Contributions for political purposes.
1781. Prohibition on taking, etc., by Government officers.
1782. Taking compensation in matters to which the United States is a party.
1784. Presents to superiors.
5450. Bribery of member of Congress.
5451. Bribery of Government officers.
5498. Interest in claims, etc.
5500. Member of Congress accepting bribe, etc.
5501. United States officer accepting bribe, etc.
5502. Forfeiture of office.
Act Aug. 15, 1876, and Act Jan. 16, 1883. Soliciting and receiving contributions for political purposes.
—— Presents from foreign governments

Title 15, chap. 6.

Contributions for political purposes.
Mar. 2, 1867, s. 3, v. 14, p. 492.
See acts Aug. 15, 1876, and Jan. 16, 1883.

SEC. 1546. No officer or employé of the Government shall require or request any workingman in any navy-yard to contribute or pay any money for political purposes, nor shall any workingman be removed or discharged for political opinion; and any officer or employé of the Government who shall offend against the provisions of this section shall be dismissed from the service of the United States.

Title 19.

Prohibition upon taking consideration for procuring contracts, offices, etc.
July 16, 1862, v. 12, p. 577; Feb. 25, 1863, v. 12, p. 696.
See note 1.

SEC. 1781. Every member of Congress or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever, from any person for procuring, or aiding to procure, any contract, office, or place, from the Government, or any Department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office or place to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever, for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly, takes, receives, or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity, or in his place as such member of Congress, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than ten thousand dollars. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section, shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States.

*Note 1.*—Sections 1781 and 1782 make it illegal for an officer of the United States to have that sort of connection with a Government contract which an agent, attorney, or solicitor assumes when he procures or aids to procure such contract for another, and when he prosecutes for another against the Government any claim founded upon a Government contract. They forbid also, the receiving by officers, for such services, any compensation, including that of an interest in the contract. (Op., XIV, 483, Oct. 29, 1874, Williams.)

SEC. 1782. No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

Upon taking compensation in matters to which United States is a party. June 11, 1864, v. 13, p. 123. See secs. 3739 to 3742, Contracts and Supplies, Division I.

SEC. 1784. No officer, clerk, or employé in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employés in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ.

Prohibition of contributions, presents, etc., to superiors. Feb. 1, 1870, v. 16, p. 63.

SEC. 5450. Every person who promises, offers, gives, or causes or procures to be promised, offered or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any member of either House of Congress, either before or after such member has been qualified or has taken his seat, with intent to influence his vote or decision on any question, matter, cause, or proceeding which may be at any time pending in either House of Congress, or before any committee thereof, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and shall be, moreover, imprisoned not more than three years.

Title 70, chap. 5.

Bribery of member of Congress. Feb. 26, 1853, s. 6, v. 10, p. 171.

SEC. 5451. Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Con-

Bribery of any United States officers. July 13, 1866, s. 62, v. 14, p. 168; July 18, 1866, s. 35, v. 14, p. 186; Mar. 3, 1863, s. 6, v. 12, p. 740.

gress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

Title 70, chap. 6.

Officers, etc., interested in claims.
Feb. 26, 1853, s. 2, v. 10, p. 170.

SEC. 5498. Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.

Member of Congress accepting bribe, etc.
Feb. 26, 1853, s. 6, v. 10, p. 171.
See sec. 5450.

SEC. 5500. Any member of either House of Congress who asks, accepts, or receives any money, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, either before or after he has been qualified or has taken his seat as such member, with intent to have his vote or decision on any question, matter, cause, or proceeding which may be at any time pending in either house, or before any committee thereof, influenced thereby, shall be punished by a fine not more than three times the amount asked, accepted, or received, and by imprisonment not more than three years.

United States officer accepting bribe, etc.
July 13, 1866, s. 62, v. 14, p. 168; July 18, 1866, s. 35, v. 14, p. 186; Mar. 3, 1863, s. 6, v. 12, p. 740.
See sec. 5498, under Claims.

SEC. 5501. Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may, at any time, be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section.

Forfeiture of office.

SEC. 5502. Every member, officer, or person, convicted under the provisions of the two preceding sections, who

holds any place of profit or trust, shall forfeit his office or place; and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States.

Feb. 26, 1853, s. 6, v. 10, p. 171.

That all executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government, any money or property or other thing of value for political purposes; and any such officer or employee who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars.

Aug. 15, 1876.

Contributions for political purposes forbidden.

Aug. 15, 1876, ch. 287, s. 6, v. 19, p. 143.

No Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

Jan. 16, 1883.

Assessment, etc., for political purposes forbidden.

Jan. 16, 1883, ch. 27, s. 11, P. E. L., p. 406.

No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

Ibid., s. 12.

No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

Ibid., s. 13.

No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

Ibid., s. 14.

Any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court.

Ibid., s. 15.

Presents from foreign governments. See articles for the government of the Navy, Miscellaneous Provisions, Division I.

See also June 17, 1874. Diplomatic Officers.

## BOUNTY, ETC.

Sec.
4635. Bounty for destruction of vessels.
4642. Distribution of bounty, etc.
4643. Assignments of prize money and bounty.
4723. Bounty to colored soldiers.
—— Bounty to sailors and marines.
—— Act July 4, 1864. Bounty for enlisting.

Title 54.

Bounty for persons on board vessels sunk or destroyed.
June 30, 1864, s. 11, v. 13, p. 310.
As to bounty for the capture of vessels engaged in the slave trade with Africans on board, see under Slave Trade. See note 1.

SEC. 4635. A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture.

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*Note 1.*—The term "allowances," when employed in a general sense, has been regarded as including bounty. Thus, see XIII, Op., 197, where it is held that the general forfeiture of pay and allowances due at the date of offense, imposed upon deserters by paragraph 1358, Army Regulations, embraced instalments of bounty due at the time of the desertion; also United States *v.* Landers, 2 Otto, 77, where the court goes so far as to hold that a forfeiture of "pay and allowances" imposed by sentence, includes bounty. (Winthrop's Digest, p. 132.)

Service rendered since the 3d of March, 1855, including the late rebellion, does not entitle to bounty lands. Only one warrant for one hundred and sixty acres can issue to a soldier for any and all service.

Where service has been rendered by a substitute, he is the person entitled to bounty land, and not his employer.

Applications for bounty-land warrants must be made to the Commissioner of Pensions; correspondence in relation to bounty in money should be addressed to the Second Auditor of the Treasury. (Pension Office Decisions.)

Officers and privates dismissed the service without trial, and remanded to the service, by the President, but who, not receiving the order of the President, did not return to the service, are, notwithstanding, entitled to bounty land. (Pension Office Decisions.)

Where any portion of the Marine Corps in the several wars referred to in the act of September 28, 1850, was embodied with the Army in the field and performed service as a part of the Army, it is entitled to bounty land. (Idem.)

The word "service" in bounty-land acts refers to that of the soldier, not of his company.

Claim of a soldier can be valid only on one of the following conditions: 1. Must have been regularly mustered into the United States service. 2. That the services were paid for by the United States. 3. That he served with the armed forces of the United States, subject to the military orders of a United States officer. (Idem.)

The entire portion of the Marine Corps, whether they served on shipboard or land on the Mexican coast or in the interior, in the Mexican war, are to be considered within the true meaning of the resolution of the 10th of August, 1848, as having "served with the Army in the war with Mexico," and entitled to the bounty land and other remuneration which that resolution provides. But in awarding it to such as received prize money, such money should, in the account, be carried to the credit of the Government. (Op., 5, p. 155, Sept. 17, 1849, Johnson.)

Under the act of March 3, 1855, and sections 2425 to 2429, R. S., members of the Marine Corps and their representatives would be entitled to bounty land without relinquishing or returning prize money, etc. (Pension Office Decisions.)

Not entitled to bounty land for service in a United States ship not engaged in the Mexican war; nor for service during the war in a war vessel on the coast of Africa. (Idem.)

Pardon by the President for participation in the late rebellion does not authorize the allowance of bounty land, the right to which is the subject of a claim against the Government and is governed by the provisions of the joint resolution of March 2, 1867. (Pension Office Decisions.)

Sec. 4642. All ransom money, salvage, bounty, or proceeds of condemned property accruing or awarded to any vessel of the Navy shall be distributed and paid to the officers and men entitled thereto, in the same manner as prize-money, under the direction of the Secretary of the Navy.

Distribution of bounty, etc.

Sec. 4643. Every assignment of prize or bounty money due to enlisted persons in the naval service, and all powers of attorney or other authority, to draw, receipt for, or transfer the same shall be void unless the same be attested by the captain or other commanding officer, and the paymaster.

Assignments of prize money and bounty. [By s. 3689 of the R. S., "bounty to soldiers" is a permanent annual appropriation.]

Title 57.

SEC. 4723. All colored persons who enlisted in the Army during the war of the rebellion, and who are now prohibited from receiving bounty and pension on account of being borne on the rolls of their regiments as "slaves," shall be placed on the same footing, as to bounty and pension, as though they had not been slaves at the date of their enlistment.

Colored soldiers enrolled as "slaves." Mar. 3, 1873, ch. 262, v. 17, p. 601. See Op., XV, p. 474.

That persons hereafter enlisted into the naval service or marine corps during the present war shall be entitled to receive the same bounty as if enlisted in the Army * * *.

July 1, 1864. S. 4, v. 13, p. 342. See July 4, 1864. See note 1.

Every volunteer who is accepted and mustered into the service for a term of one year, unless sooner discharged, shall receive, and be paid by the United States, a bounty of one hundred dollars; and if for a term of two years, unless sooner discharged, a bounty of two hundred dollars;

July 4, 1864. Bounty for enlisting. S. 1, v. 13, p. 379. See note 2.

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*Note 1.*—The foregoing act repeals the joint resolution of February 24, 1864, conferring on seamen and ordinary seamen a bounty equal to three months pay on their enlisting in the Navy.

*Note 2.*—April 22, 1872, chap. 114, v. 17, p. 55, authorizes $100 bounty to all volunteers who enlisted prior to July 22, 1861, for *three* years, and were mustered into service before August 6, 1861, if they were honorably discharged and had not received the same for such service.

Two and three years' men who enlisted between April 12, 1861, and December 24, 1863, or between April 1, 1864, and July 18, 1864, are entitled to $100 bounty under act of July 22, 1861, chap. 9, v. 12, p. 270, provided they served two years or more as enlisted men, or were honorably discharged as such on account of wounds received in line of duty before two years' service. If discharged before serving two years, and died *before* July 28, 1866, of disease contracted in the service, his heirs are entitled to the additional bounty under act of July 28, 1866, chap. 296, v. 14, p. 322. If a soldier died in the service, his heirs became entitled to any bounty to which the soldier would have been entitled under his contract.

The act of July 28, 1866, gave an additional bounty of $100 to men who enlisted and *served* for three years from April 19, 1861, and $50 to those who enlisted and *served* for two years from April 14, 1861. Not given to any one if the soldier was entitled to receive, at any time, a greater bounty than $100 under any other act or acts.

Drafted men, enrolled from March 3, 1863, to September 5, 1864, for three years, or men who, from March 3, 1863, to September 5, 1864, enlisted for three years as *substitutes* for drafted men, are only entitled by act of March 3, 1863, to $100 bounty, if they served two years or more, or were discharged by reason of wounds received in line of duty before two years' service. Neither they nor their heirs are entitled to additional bounty under act of July 28, 1866.

Under the act of July 4, 1864, v. 13, p. 379, if discharged "because of wounds received in the line of duty," the volunteer became entitled to the full amount of bounty therein provided; but if discharged "because of services no longer required," or by "close of war," he has no claim for balance of bounty.

All soldiers discharged by reason of wounds received in battle, or in line of duty, are entitled by acts of March 3, 1863, March 3, 1865, and joint resolution of April 12, 1866, to receive the same bounty they would have received had they served their full term of enlistment. The word *wound* is held to mean injury from *violence* received in line of duty. Bounty depends upon *being discharged by reason of the wound.*

No bounty is paid for enlistments made before April 12, 1861, nor for 100 days, or three, six, and nine months' men; nor for one year's men enlisting prior to July 18, 1864; nor to volunteers who enlisted after April 30, 1865. (From circular of Second Auditor, March 3, 1880.)

The same bounties (as to the duration of enlistment, amounts and modes of payment) are to be paid to "persons" of all grades who have, since the 1st of July, 1864,

and if for a term of three years, unless sooner discharged, a bounty of three hundred dollars; one-third of which bounty shall be paid to the soldier at the time of his being mustered into the service, one-third at the expiration of one-half of his term of service, and one-third at the expiration of his term of service. And in case of his death while in service, the residue of his bounty unpaid shall be paid to his widow, if he shall have left a widow; if not, to his children, or if there be none, to his mother, if she be a widow.

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[An act, approved March 3, 1865, chap. 124, s. 5, v. 13, p. 539, provides that no person appointed or rated an officer or clerk in the Navy, shall receive any bounty while holding such appointment.]

## COAST SURVEY.


Sec.
4683. Mode of conducting surveys.
4684. Employment of officers of Army and Navy.
4685. Power to use books, etc., and to employ persons.
4686. Power to employ vessels.
4687. Manner of employment of officers of Army and Navy.
4688. Allowance for subsistence.
—— Naval officers attached to Coast Survey, etc.
76. Disposal of charts.


Title 56.

Mode of conducting surveys. Mar. 3, 1843, s. 1, v. 5, p. 640.

SEC. 4683. All appropriations made for the work of surveying the coast of the United States shall be expended in accordance with the plan of reorganizing the mode of executing the survey which has been submitted to the President by a board of officers organized under the act of March three, eighteen hundred and forty-three, chapter one hundred.

Employment of officers of Army and Navy. Ibid. 19 A. G. Op., p. 182.

SEC. 4684. The President shall carry into effect the plan of the board, as agreed upon by a majority of its members; and shall cause to be employed as many officers of the Army and Navy of the United States as will be compatible with the successful prosecution of the work; the officers of the Navy to be employed on the hydrographical parts, and the officers of the Army on the topographical parts of the work; and no officer of the Army or Navy shall receive any extra pay out of any appropriations for surveys.

Power to use books, etc., and to employ persons. July 10, 1832, s. 2, v. 4, p. 571.

SEC. 4685. The President is authorized, in executing the provisions of this Title, to use all maps, charts, books, instruments, and apparatus belonging to the United States, and to direct where the same shall be deposited, and to employ all persons in the land or naval service of the United States,

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enlisted, or who may thereafter enlist, into the Navy or Marine Corps of the United States.

Enlisted men advanced after enlistment to any higher grade or rating do not thereby forfeit their right to any future instalment of bounty. (Fourth Auditor, Rules 1864.)

Where a soldier was enlisted in the Army as a volunteer in December, 1861, for three years, but afterward, and before the expiration of his term of enlistment, was voluntarily transferred to the naval service, in which he served out the remainder of his term: *Held*, That he is not entitled to the additional bounty provided by the act of July 28, 1866, chap. 296. (Op., XIV, 223, April 23, 1873, Williams.)

Where a soldier deserted, subsequently surrendered himself, was restored to duty, and finally "honorably discharged," the fact of the mark of desertion standing against him is no impediment to his receiving bounty (Kelly's case, Supreme Court, 15 Wallace, p. 34.) See sec. 2, act of August 14, 1888, title, "Deserters and desertion," Division I.

and such astronomers and other persons, as he shall deem proper.

SEC. 4686. The President is authorized, for any of the purposes of surveying the coast of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of this Title.

Power to employ vessels. Feb. 10, 1807, s. 3, v. 2, p. 414; Apr. 14, 1818, s. 1, v. 3, p. 425.

SEC. 4687. Officers of the Army and Navy shall, as far as practicable, be employed in the work of surveying the coast of the United States, whenever and in the manner required by the Department having charge thereof.

Manner of employment of officers of Army or Navy. June 17, 1844, s. 1, v. 5, pp. 681, 691.

SEC. 4688. The Secretary of the Treasury may make such allowances to the officers and men of the Army and Navy, while employed on Coast Survey service, for subsistence, in addition to their compensation, as he may deem necessary, not exceeding the sum authorized by the Treasury regulation of the eleventh day of May, eighteen hundred and forty-four.

Allowance for subsistence. June 12, 1858, s. 1, v. 11, pp. 319, 320. See note to this section, Division I, "Pay and allowances."

Nor shall there hereafter be made any allowance for subsistence to officers of the Navy attached to the Coast and Geodetic Survey, except that when officers are detached to do work away from their vessels under circumstances involving them in extra expenditures, the Superintendent may allow to any such officer subsistence at a rate not exceeding one dollar per day for the period actually covered by such duty away from such vessel.

Aug. 30, 1890.

Naval officers attached to Coast Survey, allowance for subsistence. R. S., sec. 4688; 26 Stat. L., 371, par. 2.

SEC. 76. The charts published by the Coast and Geodetic Survey shall be sold at cost of paper and printing as nearly as practicable; and there shall be no free distribution of such charts except to the Departments and officers of the United States requiring them for public use; and a number of copies of each sheet, not to exceed three hundred, to be presented to such foreign governments, libraries, and scientific associations, and institutions of learning as the Secretary of the Treasury may direct; but on the order of Senators, Representatives, and Delegates not to exceed ten copies to each may be distributed through the Superintendent of the Coast and Geodetic Survey.

Coast Survey charts. R. S., sec. 4691, p. 911, amended by act Jan. 12, 1895.

## COLLISIONS—RULES OF THE SEA.

Arts. 1-15. Lights—Rules concerning.
Art. 16. Speed of ships.
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Feb. 8, 1895. Regulation of Navigation on the Great Lakes.
Rule 1. Steam and sail vessels.
Rules 2-13. Lights.
Rules 14-15. Fog signals.
Rules 16-28. Steering and sailing rules.
Rule 28. Sec. 2. Fine.
Sec. 3. Authority to make regulations.
Sec. 4. Repeal of inconsistent rules.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following regulations for preventing collisions at sea shall be followed by all public and private vessels of the

United States upon the high seas and in all *waters connected therewith, navigable by sea-going vessels.*

Preliminary.

In the following rules every *steam-vessel* which is under sail and not under steam is to be considered a *sailing-vessel*, and *every vessel* under steam, whether under sail or not, is to be considered a *steam-vessel.*

*The word "steam-vessel" shall include any vessel propelled by machinery.*

*A vessel is "under way" within the meaning of these rules when she is not at anchor, or made fast to the shore, or aground.*

Aug. 19, 1890, regulations for preventing collisions at sea, as amended by the acts of May 28, 1894, Aug. 13, 1894, and June 10, 1896, and proclaimed by the President of the United States to take effect July 1, 1897.

Material changes from former acts indicated by *italics.* See notes 1 and 2.

## RULES CONCERNING LIGHTS, AND SO FORTH.

The word "visible" in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere.

ARTICLE 1. The *rules concerning* lights shall be *complied with* in all weathers from sunset to sunrise, *and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.*

ART. 2. *A steam-vessel* when under way shall carry—(a) On or in front of the foremast, *or if a vessel without a foremast, then in the fore part of the vessel*, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, *so, however, that the light need not be carried at a greater height above the hull than forty feet*, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the *vessel*, namely, from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten

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*Note 1.*—The attention of all persons concerned is invited to the changes in the rules relating to lights, steering and sailing, etc., embodied in the act, as amended, to adopt regulations for preventing collisions at sea, approved August 19, 1890, and proclaimed by the President, to take effect July 1, 1897.

On and after July 1, 1897, these rules are to be followed by all public and private vessels of the United States upon the high seas and in all waters connected therewith navigable by seagoing vessels, except upon harbors, rivers, and inland waters, and upon the Great Lakes and their tributary waters as far east as Montreal.

Material changes from former acts are indicated by *italics.*

Amendments to the act are shown by a statement of the date of the passage of the amendment.

Article 9 of the act, relating to fishing vessels, was repealed May 28, 1894, and Congress by an act approved August 13, 1894, reenacted article 10 of the International Regulations of 1885, now in force, so far as said article relates to lights for fishing vessels. It is inserted, therefore, as reenacted, in place of article 9, repealed, of the act of August 19, 1890.

The laws to prevent collisions upon the harbors, rivers, and inland waters of the United States and those relating to the Great Lakes follow.

*Note 2.*—Regulations for preventing collisions at sea were adopted by act of 1885, March 3, ch. 354 (33 Stat. L., 438), modifying R. S., sec. 4233.

By act of 1890, Aug. 19, ch. 802 (1 Supp. R. S., 781), new regulations were substituted These are amended by the above act of 1894.

When act takes effect.

By sec. 3 of the act of 1890 (1 Supp. R. S., 789), the act was not to take effect until a time to be fixed by proclamation of the President. The proclamation of the President was issued on July 13, 1894 (28 Stat. L., p. 1250), fixing the first day of March, 1895, as the day on which the act of 1890, as amended by the above act of 1894, is to take effect.

But by 1895, Feb. 23, ch. 127, and proclamation issued in accordance therewith, the taking effect of the act of 1890 is postponed to a date to be hereafter fixed by the President. (See, as to lights on fishing vessels, 1894, Aug. 13, ch. 284, and note.)

points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) *A steam-vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.*

ART. 3. A *steam-vessel* when towing another *vessel* shall, in addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than *six* feet apart, *and when towing more than one vessel shall carry an additional bright white light six feet above or below such light, if the length of the tow measuring from the stern of the towing vessel to the stern of the last vessel towed exceeds six hundred feet.* Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in article two (a), *excepting the additional light, which may be carried at a height of not less than fourteen feet above the hull.*

*Such steam-vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.*

ART. 4. (a) A *vessel* which from any accident is not under command shall carry at the same height as a white light mentioned in article two (a), *where they can best be seen*, and if a *steam-vessel* in lieu of that light, *two red lights*, in a vertical line one over the other, not less than *six* feet apart, and of such a character as to be visible *all around the horizon* at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than *six* feet apart, *where they can best be seen, two* black balls or shapes, each two feet in diameter.

(b) A *vessel* employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in article two (a), and if a *steam-vessel* in lieu of that light, three lights in a vertical line one over the other not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible *all around the horizon, at a distance of at least two miles.*

By day she shall carry in a vertical line, one over the other, not less than six feet apart, *where they can best be seen*, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in color, and the middle one diamond in shape and white.

(c) The *vessels* referred to in this article, when not making way through the water, shall not carry the side-lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this article are to be taken by other *vessels* as signals that the *vessel* showing them is not under command and can not therefore get out of the way.

*These signals are not signals of vessels in distress and requiring assistance.* Such signals are contained in article thirty-one.

ART. 5. A *sailing vessel* under way *and any vessel* being towed shall carry the same lights as are prescribed by article two for a *steam-vessel* under way, with the exception of the white lights mentioned therein, which they shall never carry.

ART. 6. Whenever, as in the case of small vessels *under way* during bad weather, the green and red side-lights can not be fixed, these lights shall be kept *at hand, lighted and* ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, *nor, if practicable, more than two points abaft the beam on their respective sides.*

To make the use of these portable lights more certain and easy the lanterns containing them shall each be painted outside with the color of the light they respectively contain, and shall be provided with proper screens.

Substitute for 1890, Aug. 19, 1 Supp. R. S., 782.

Small vessels relieved from certain lights.

ART. 7. *Steam-vessels of less than forty, and vessels under oars or sails* of less than twenty tons *gross* tonnage, *respectively, and rowing boats*, when under way, shall not be *required* to carry the lights mentioned in article two (a), (b), and (c), but if they do not carry them they shall be provided with the following lights:

Small steam vessels.

"*First. Steam-vessels of less than forty tons shall carry—*

"(*a*) *In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in article two* (*a*), *and of such a character as to be visible at a distance of at least two miles.*

"(*b*) *Green and red side-lights constructed and fixed as prescribed in article two* (*b*) *and* (*c*), *and of such a character as to be visible at a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lanterns shall be carried not less than three feet below the white light.*

Small steamboats as carried by other vessels.

"*Second. Small steamboats, such as are carried by seagoing vessels, may carry the white light at a less height than nine feet*

*above the gunwale, but it shall be carried above the combined lantern mentioned in subdivision one (b).*

"*Third. Vessels under oars or sails* of less than twenty tons shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

Small vessels under sails.

"*Fourth. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.*

"*The vessels referred to in this article shall not be obliged to carry the lights prescribed by article four (a) and article eleven, last paragraph.*"—[Act of May 28, 1894.]

ART. 8. Pilot-vessels when engaged on their station on pilotage duty shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

*On the near approach of or to other vessels they shall have their side-lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.*

*A pilot-vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board may show the white light instead of carrying it at the masthead, and may, instead of the colored lights above mentioned, have at hand, ready for use, a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.*

Pilot-vessels when not engaged on their station on pilotage duty shall carry lights similar to those of other *vessels of their tonnage.*

ART. 9. (Article nine, act of August 19, 1890, was repealed by act of May 28, 1894, and article 10, act of March 3, 1885, was reenacted in part as follows, by act of August 13, 1894, and is reproduced here as article 9:)

Fishing-vessels of less than twenty tons net registered tonnage, when under way and when not having their nets, trawls, dredges, or lines in the water, shall not be obliged to carry the colored side-lights; but every such vessel shall in lieu thereof have ready at hand a lantern with a green glass on the one side and a red glass on the other side, and on approaching to or being approached by another vessel such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

The following portion of this article applies only to fishing-

vessels and boats when in the sea off the coast of Europe lying north of Cape Finisterre:

(*a*) All fishing-vessels and fishing-boats of twenty tons net registered tonnage or upward, when under way and when not having their nets, trawls, dredges, or lines in the water, shall carry and show the same lights as other vessels under way.

(*b*) All vessels when engaged in fishing with drift-nets shall exhibit two white lights from any part of the vessel where they can be best seen. Such lights shall be placed so that the vertical distance between them shall be not less than six feet and not more than ten feet, and so that the horizontal distance between them, measured in a line with the keel of the vessel, shall be not less than five feet and not more than ten feet. The lower of these two lights shall be the more forward, and both of them shall be of such a character and contained in lanterns of such construction as to show all round the horizon, on a dark night, with a clear atmosphere, for a distance of not less than three miles.

(*c*) All vessels when trawling, dredging, or fishing with any kind of drag-nets shall exhibit, from some part of the vessel where they can be best seen, two lights. One of these lights shall be red and the other shall be white. The red light shall be above the white light, and shall be at a vertical distance from it of not less than six feet and not more than twelve feet; and the horizontal distance between them, if any, shall not be more than ten feet. These two lights shall be of such a character and contained in lanterns of such construction as to be visible all round the horizon, on a dark night, with a clear atmosphere, the white light to a distance of not less than three miles and the red light of not less than two miles.

(*d*) A vessel employed in line-fishing, with her lines out, shall carry the same lights as a vessel when engaged in fishing with drift-nets.

(*e*) If a vessel, when fishing with a trawl, dredge, or any kind of drag-net, becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall show the light and make the fog signal for a vessel at anchor.

(*f*) Fishing-vessels may at any time use a flare-up in addition to the lights which they are by this article required to carry and show. All flare-up lights exhibted by a vessel when trawling, dredging, or fishing with any kind of drag-net shall be shown at the after-part of the vessel, excepting that if the vessel is hanging by the stern to her trawl, dredge, or drag-net they shall be exhibited from the bow.

(*g*) Every fishing-vessel when at anchor between sunset and sunrise shall exhibit a white light, visible all round the horizon at a distance of at least one mile.

(*h*) In a fog a drift-net vessel attached to her nets, and a vessel when trawling, dredging, or fishing with any kind of drag-net, and a vessel employed in line-fishing with her lines out, shall, at intervals of not more than two minutes, make a blast with her fog-horn and ring her bell alternately. [Art. 10, Act March 3, 1885.]

ART. 10. A *vessel* which is being overtaken by another shall show from her stern to such last-mentioned *vessel* a white light or a flare-up light.

*The white light required to be shown by this article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, namely, for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side lights.*

ART. 11. A *vessel under one hundred and fifty feet in length*, when at anchor, shall carry *forward*, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile.

*A vessel of one hundred and fifty feet or upwards in length*, when at anchor, shall carry *in the forward part of the vessel, at a height of not less than twenty and* not exceeding *forty* feet above the hull, one such light, *and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.*

*The length of a vessel shall be deemed to be the length appearing in her certificate of registry.*

*A vessel aground in or near a fair-way shall carry the above light or lights and the two red lights prescribed by article four (a).*

ART. 12. *Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that can not be mistaken for a distress signal.*

ART. 13. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for *vessels* sailing under convoy, *or with the exhibition of recognition signals adopted by ship-owners, which have been authorized by their respective Governments and duly registered and published.*

ART. 14. *A steam-vessel proceeding under sail only but having her funnel up, shall carry in day-time, forward, where it can best be seen, one black ball or shape two feet in diameter.*

ART. 15. *All signals prescribed by this article for vessels under way shall be given:*

*First. By "steam vessels" on the whistle or siren.*

*Second. By "sailing vessels" and "vessels towed" on the fog horn.*

*The words "prolonged blast" used in this article shall mean a blast of from four to six seconds duration.*

*A steam-vessel* shall be provided with an *efficient whistle or siren, sounded by steam or by some substitute for steam,* so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn, to be sounded by mechanical means, and also with an efficient bell. (In all cases where the rules require a bell to be used a drum

may be substituted on board Turkish vessels, *or a gong where such articles are used on board small seagoing vessels.*) *A sailing vessel of twenty tons gross tonnage or upward* shall be provided with a similar fog horn and bell.

In fog, mist, falling snow, *or heavy rainstorms*, whether by day or night, the signals described in this article shall be used as follows, namely:

(a) *A steam vessel having way upon her* shall sound, at intervals of not more than two minutes, a prolonged blast.

(b) *A steam vessel under way, but stopped, and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between.*

(c) *A sailing vessel* under way shall sound, at intervals of not more than *one* minute, when on the starboard tack, one blast; when on the port tack, two blasts in succession, and when with the wind abaft the beam, three blasts in succession.

(d) *A vessel* when *at anchor* shall, at intervals of not more than *one* minute, ring the bell *rapidly for about five seconds.*

(e) *A vessel when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to maneuver as required by the rules, shall, instead of the signals prescribed in subdivisions (a) and (c) of this article, at intervals of not more than two minutes, sound three blasts in succession, namely: One prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.*

*Sailing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but, if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.*

Speed of ships to be moderate in fog, etc.

ART. 16. Every *vessel* shall, in a fog, mist, falling snow, *or heavy rain-storms*, go at a moderate speed, *having careful regard to the existing circumstances and conditions.*

*A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.*

Steering and sailing rules.

*Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.*

Preliminary—Risk of collision.

ART. 17. When two *sailing vessels* are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, namely:

(a) A *vessel* which is running free shall keep out of the way of a *vessel* which is close-hauled.

(b) A *vessel* which is close-hauled on the port tack shall keep out of the way of a *vessel* which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the *vessel* which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the *vessel* which is to the windward shall keep out of the way of the *vessel* which is to the leeward.

(e) A *vessel* which has the wind aft shall keep out of the way of the other *vessel*.

ART. 18. When two *steam-vessels* are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where *vessels* are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two *vessels* which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two *vessels* is end on, or nearly end on, to the other; in other words, to cases in which, by day, each *vessel* sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each *vessel* is in such a position as to see both the side-lights of the other.

It does not apply by day to cases in which a *vessel* sees another ahead crossing her own course; or by night, to cases where the red light of one *vessel* is opposed to the red light of the other, or where the green light of one *vessel* is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

ART. 19. When two *steam-vessels* are crossing, so as to involve risk of collision, the *vessel* which has the other on her own starboard side shall keep out of the way of the other.

ART. 20. When a *steam-vessel* and a *sailing vessel* are proceeding in such directions as to involve risk of collision, the *steam-vessel* shall keep out of the way of the *sailing-vessel*.

Article twenty-one. Where, by any of these rules, one of two *vessels* is to keep out of the way the other shall keep her course *and speed*.

*Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision can not be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See articles twenty-seven and twenty-nine.)* [*Act of May 28, 1894.*]

ART. 22. *Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.*

ART. 23. Every *steam-vessel which is directed by these rules to keep out of the way of another vessel*, shall, on approaching her, if necessary, slacken her speed or stop or reverse.

ART. 24. Notwithstanding anything contained in these rules every *vessel*, overtaking any other, shall keep out of the way of the overtaken *vessel*.

*Every vessel coming up with another vessel from any direction more than two points abaft her beam, that is, in such a position, with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's side-lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.*

*As by day the overtaking vessel can not always know with certainty whether she is forward of or abaft this direction from the other vessel she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.*

ART. 25. In narrow channels every *steam-vessel* shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such *vessel.*

ART. 26. *Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fair-way used by vessels other than fishing vessels or boats.*

ART. 27. In obeying and construing these rules due regard shall be had to all dangers of navigation *and collision*, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Sound signals.

ART. 28. *The words "short blast" used in this article shall mean a blast of about one second's duration.*

When *vessels* are in sight of one another, a *steam-vessel* under way, in taking any course authorized or required by these rules, *shall* indicate that course by the following signals on her *whistle or siren*, namely:

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "*My engines are* going at full speed astern."

Proper precautions.

ART. 29. Nothing in these rules shall exonerate any *vessel* or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Rules for harbors, etc.

ART. 30. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbor, river, or inland *waters.*

Distress signals.

ART. 31. When a *vessel* is in distress and requires assistance from other *vessels* or from the shore the following shall be the signals to be used or displayed by her, either together or separately, namely:

In the daytime—

First. A gun *or other explosive signal* fired at intervals of about a minute.

Second. The international code signal of distress indicated by N C.

Third. The *distance* signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.

*Fourth. A continuous sounding with any fog-signal apparatus.*

At night—

First. A gun *or other explosive signal* fired at intervals of about a minute.

Second. Flames on the *vessel* (as from a burning tar barrel, oil barrel, and so forth).

Third. Rockets or shells throwing stars of any color or description, fired one at a time, at short intervals.

*Fourth. A continuous sounding with any fog-signal apparatus.* [*Act of May 28, 1894.*]

SEC. 2. *That all laws or parts of laws inconsistent with the foregoing regulations for preventing collisions at sea for the navigation of all public and private vessels of the United States upon the high seas, and in all waters connected therewith navigable by sea-going vessels, are hereby repealed.* [*Act August 19, 1890.*]

Sept. 4, 1890.

Collisions at sea.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and her port of registry, or the port or place to which she belongs, and also the name of the ports and places from which and to which she is bound. If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

SEC. 2. That every master or person in charge of a United States vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor, and shall be liable to a penalty of one thousand dollars, or imprisonment for a term not exceeding two years; and for the above sum the vessel shall be liable and may be seized and proceeded against by process in any district court of the United States by any person; one-half such sum to be payable to the informer and the other half to the United States.

SEC. 3. That this act shall take effect at a time to be fixed by the President by Proclamation issued for that purpose.

Feb. 19, 1895.

Regulations to prevent collisions upon inland waters, etc.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That on and after March first, eighteen hundred and ninety-five, the provisions of sections forty-two hundred and thirty-three, forty-four hundred and twelve, and forty-four hundred and thirteen of the Revised Statutes and regulations pursuant thereto shall be followed on the harbors, rivers and inland waters of the United States.

The provisions of said sections of the Revised Statutes and regulations pursuant thereto are hereby declared special rules duly made by local authority relative to the navigation of harbors, rivers and inland waters as provided for in Article thirty, of the Act of August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea."

See note 3.

SEC. 2. The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light

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*Note 3.*—Pursuant to Section 2 of the Act approved February 19, 1895, the following lines dividing the high seas from rivers, harbors, and inland waters are hereby designated and defined:

(Bearings are magnetic.)

New York. NEW YORK HARBOR.—From Navesink (southerly) Light House NE. ⅝ E., easterly, to Scotland Light Vessel, thence NNE. ¼ E. through Gedney Channel Whistling Buoy (proposed position) to Rockaway Point Life-Saving Station.

Baltimore. BALTIMORE HARBOR AND CHESAPEAKE BAY.—From Cape Henry Light House NE. by E. ¾ E., easterly, to Outer Entrance Whistling Buoy, thence N. by E. ⅜ E. to Cape Charles Light House.

Galveston. GALVESTON HARBOR.—From Galveston Bar Whistling Buoy, N. by W. ¾ W. through the beacon, marking the outer extremity of the N. jetty, and SW. by W. ½ W., westerly, through North Breaker Beacon.

Boston. BOSTON HARBOR.—From Point Allerton NNE. ¼ E., easterly, through Point Allerton Beacon to Northeast Grave Whistling Buoy, thence NNE. ¼ E. to Outer Breaker (Great Pig Rocks) Bell Buoy, thence NE. by E. ⅜ E. to Halfway Rock Beacon, thence NE. by E. ¼ E. to Eastern Point Light House.

San Francisco. SAN FRANCISCO HARBOR.—From Point Bonita Light House SE. ⅞ S. to Point Lobos.

Portland. PORTLAND, ME., HARBOR.—From Cape Elizabeth (E.) Light ENE. to Halfway Rock Light, thence E., southerly, to Seguin Light.

Philadelphia. PHILADELPHIA HARBOR AND DELAWARE BAY.—From Cape Henlopen Light NE. by E. to South Shoal Whistling Buoy, thence NNE. ¾ E. to Cape May Light.

Charleston. CHARLESTON HARBOR.—From Charleston Light Vessel NW. ¼ W. (toward Sullivans Island Range Rear Light) to the North Jetty, and from Charleston Light Vessel SW. ½ W. to Charleston Whistling Buoy, thence SW. ⅞ W. to Charleston Main Channel Entrance Bell Buoy, thence W. to Folly Island.

Savannah. SAVANNAH HARBOR AND CALIBOGUE SOUND.—From Tybee Whistling Buoy NNW. 11/16 W. through North Slue Channel Outer Buoy to Braddock Point, Hilton Head Island, and from Tybee Whistling Buoy W. to Tybee Island.

Brunswick. ST. SIMON SOUND (BRUNSWICK HARBOR) AND ST. ANDREW SOUND.—From hotel on Beach of St. Simon Island 11/16 mile NE. by E. ¼ E. from St. Simon Light House, SE. ⅞ E. to St. Simon Sea Buoy, thence S. ¼ E. to St. Andrew's Sound Sea Buoy, thence W. to the Shore of Little Cumberland Island.

Pensacola. PENSACOLA HARBOR.—From Pensacola Entrance Whistling Buoy N. ⅞ W., a tangent to the E. side of Fort Pickens, to the shore of Santa Rosa Island, and from the Whistling Buoy NW. 1/16 W. to Fort McRee Range Front Light.

Mobile. MOBILE HARBOR AND BAY.—From Mobile Bay Outer or Deep Sea Whistling Buoy (or its watch buoy in summer) NE. by N. to the shore of Mobile Point, and from the Whistling Buoy NW. by W. to the shore of Dauphin Island.

New Orleans. NEW ORLEANS HARBOR AND THE DELTA OF THE MISSISSIPPI.—From South Pass East Jetty Light N. by E. ½ E. to Pass a Loutre Light, thence N. to Errol Island and from South Pass East Jetty Light W. ⅞ S. to Southwest Pass Light, thence N. to shore.

San Diego. SAN DIEGO HARBOR.—From Point Loma Light S. ⅞ E. to San Diego Bay Outside Bar Whistling Buoy, thence NNE. ⅞ E. to tower of Coronado Hotel.

Kittery. KITTERY HARBOR, ME., AND PORTSMOUTH HARBOR, N. H.—From Kitts Rocks Bell Buoy NNE. ¾ E. through Horn Island to the main shore, and from Kitts Rocks Bell Buoy NW. by W. ⅝ W. through Frosts Point Ledge Buoy to Frosts Point, N. H.

Newburyport. NEWBURYPORT, IPSWICH, AND ANNISQUAM HARBORS, MASS.—From Salisbury Beach Range Rear Light a line SE. ¼ S. to Newburyport Bar Whistling Buoy, thence a line S. by E. ⅝ E. (toward Annisquam Light) to a point of intersection with a line drawn from Ipswich Light E. 11/16 S. to Halibut Point, thence, from the point of intersection, along the latter line E. 11/16 S. to Halfbut Point.

Columbia River. COLUMBIA RIVER ENTRANCE.—From Cape Disappointment Light SE. ⅞ E. to Point Adams Light.

houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters.

SEC. 3. Collectors or other chief officers of the customs shall require all sail vessels to be furnished with proper signal lights. Every such vessel that shall be navigated without complying with the Statutes of the United States, or the regulations that may be lawfully made thereunder, shall be liable to a penaly of two hundred dollars, one-half to go to the informer; for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

SEC. 4. The words "inland waters" used in this Act shall not be held to include the Great Lakes and their connecting and tributary waters as far east as Montreal; and this act shall not in any respect modify or affect the provisions of the Act entitled "An Act to regulate navigation on the Great Lakes and their connecting and tributary waters," approved February eighth, eighteen hundred and ninety-five.

## RULES FOR VESSELS OF THE NAVY AND MERCANTILE MARINE.

Preliminary instructions.

The instructions herein contained will be observed in the navigation of vessels of the mercantile marine of the United States; and by the provisions of the Revised Statutes the following rules, from one to twenty-four, inclusive, are made applicable to the navigation of vessels of the Navy.

Every sail-vessel of the mercantile marine navigated without complying with the instructions of this circular will be liable to a penalty of two hundred dollars, for which sum the vessel may be seized and proceeded against.

Steam and sail vessels.

RULE ONE. Every steam-vessel which is under sail, and not under steam, shall be considered a sail-vessel; and every steam-vessel which is under steam, whether under sail or not, shall be considered a steam-vessel.

Lights.

RULE TWO. The lights mentioned in the following rules, and no others, shall be carried in all weathers, between sunset and sunrise.

Ocean-going steamers.

RULE THREE. All ocean-going steamers, and steamers carrying sail, shall, when under way, carry—

(*A*) At the foremast head, a bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side.

(*B*) On the starboard side, a green light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of

the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(*C*) On the port side, a red light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

The green and red light shall be fitted with inboard screens, projecting at least three feet forward from the lights, so as to prevent them from being seen across the bow.

Towing steamers.

RULE FOUR. Steam-vessels, when towing other vessels, shall carry two bright white mast-head lights vertically, in addition to their side-lights, so as to distinguish them from other steam-vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by Rule Three.

Starboard and port side lights.

RULE FIVE. All steam-vessels, other than ocean-going steamers and steamers carrying sail, shall, when under way, carry on the starboard and port sides lights of the same character and construction and in the same position as are prescribed for side-lights by Rule Three, except in the case provided in Rule Six.

Mississippi River steamers.

RULE SIX. River-steamers navigating waters flowing into the Gulf of Mexico, and their tributaries, shall carry the following lights, namely: One red light on the outboard side of the port smoke-pipe, and one green light on the outboard side of the starboard smoke-pipe. Such lights shall show both forward and abeam on their respective sides.

Coasting steam vessels.

RULE SEVEN. All coasting steam-vessels, and steam-vessels other than ferry-boats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers, or other inland waters of the United States, except those mentioned in Rule Six, shall carry the red and green lights as prescribed for ocean-going steamers; and, in addition thereto, a central range of two white lights; the after-light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The head-light shall be so constructed as to show a good light through twenty points of the compass, namely: from right ahead to two points abaft the beam on either side of the vessel; and the after-light so as to show all around the horizon.

Ferry-boats, etc.

The lights for ferry-boats, barges, and canal boats when in tow of steam vessels shall be regulated by such rules as the Board of Supervising Inspectors of Steam-Vessels shall prescribe.

Sailing vessels.

RULE EIGHT. Sail-vessels, under way or being towed, shall carry the same lights as steam-vessels under way, with the exception of the white mast-head lights, which they shall never carry. (See Rule Three, *b* and *c*.)

Small sailing vessels.

RULE NINE. Whenever, as in case of small vessels during bad weather, the green and red lights can not be fixed,

these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side. To make the use of these portable lights more certain and easy, they shall be painted outside with the color of the light they respectively contain, and shall be provided with suitable screens.

Vessels at anchor.

RULE TEN. All vessels, whether steam-vessels or sail-vessels, when at anchor in roadsteads or fairways, shall, between sunset and sunrise, exhibit where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and at a distance of at least one mile.

Pilot vessels.

RULE ELEVEN. Sailing pilot-vessels shall not carry the lights required for other sailing-vessels, but shall carry a white light at the mast-head, visible all around the horizon, and shall also exhibit a flare-up light every fifteen minutes.

Coal boats, etc.

RULE TWELVE. Coal-boats, trading-boats, produce-boats, canal-boats, oyster-boats, fishing-boats, rafts, or other water-craft, navigating any bay, harbor, or river, by hand-power, horse-power, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fair-way of any bay, harbor, or river, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board of Supervising Inspectors of Steam Vessels.

Act June 13, 1886.

Rule 12 shall be so construed as not to require row-boats and skiffs upon the river St. Lawrence to carry lights.

Open boats.

RULE THIRTEEN. Open boats shall not be required to carry the side-lights required for other vessels, but shall, if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other side; and, on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up, in addition, if considered expedient.

Naval vessels.

RULE FOURTEEN. The exhibition of any light on board of a vessel of war of the United States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander-in-chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it.

Fog signals.

RULE FIFTEEN. Whenever there is a fog, or thick weather, whether by day or night, fog-signals shall be used, as follows:

(A) Steam-vessels under way shall sound a steam-whistle

placed before the funnel, not less than eight feet from the deck, at intervals of not more than one minute.

(B) Sail-vessels under way shall sound a fog-horn at intervals of not more than five minutes.

(C) Steam-vessels and sail-vessels, when not under way, shall sound a bell at intervals of not more than five minutes.

(D) Coal-boats, trading-boats, produce-boats, canal-boats, oyster-boats, fishing-boats, rafts, or other water-craft, navigating any bay, harbor, or river, by hand-power, horse-power, sail, or by the current of the river, or anchored or moored in or near the channel or fairway of any bay, harbor, or river, and not in any port, shall sound a fog-horn, or equivalent signal, which shall make a sound equal to a steam-whistle, at intervals of not more than two minutes.

Sailing vessels.

RULE SIXTEEN. If two sail-vessels are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

RULE SEVENTEEN. When two sail-vessels are crossing so as to involve risk of collision, then, if they have the wind on different sides, the vessel with the wind on the port side shall keep out of the way of the vessel with the wind on the starboard side, except in the case in which the vessel with the wind on the port side is close-hauled, and the other vessel free, in which case the latter vessel shall keep out of the way. But if they have the wind on the same side, or if one of them has the wind aft, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

Steam-vessels.

RULE EIGHTEEN. If two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two steamers crossing,

RULE NINETEEN. If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

Sail vessels and steamers meeting.

RULE TWENTY. If two vessels, one of which is a sail-vessel and the other a steam-vessel, are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the way of the sail-vessel.

Approaching or in fog.

RULE TWENTY-ONE. Every steam-vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam-vessel shall, when in a fog, go at a moderate speed.

Overtaking.

RULE TWENTY-TWO. Every vessel overtaking any other vessel shall keep out of the way of the last-mentioned vessel.

Right of way.

RULE TWENTY-THREE. Where, by Rules seventeen, nineteen, twenty, and twenty-two, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of Rule twenty-four.

RULE TWENTY-FOUR. In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger. Special instructions.

RULE TWENTY-FIVE. Collectors, or other chief officers of the customs, shall require all sail-vessels to be furnished with proper signal-lights, and every such vessel shall, on the approach of any steam-vessel during the night-time, *show a lighted torch* upon that point or quarter to which such steam-vessel shall be approaching. Signal lights and torches.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following rules for preventing collisions shall be followed in the navigation of all public and private vessels of the United States upon the Great Lakes and their connecting and tributary waters as far east as Montreal. Act of Feb. 8, 1895. To regulate navigation on the Great Lakes and their connecting and tributary waters. See note 4.

RULE 1. Every steam vessel which is under sail and not under steam, shall be considered a sail vessel; and every steam vessel which is under steam, whether under sail or not, shall be considered a steam vessel. The word steam vessel shall include any vessel propelled by machinery. A vessel is under way within the meaning of these rules when she is not at anchor or made fast to the shore or aground. Defining vessels.

RULE 2. The lights mentioned in the following rules and no others shall be carried in all weathers from sunset to sunrise. The word visible in these rules when applied to lights shall mean visible on a dark night with a clear atmosphere. Lights prescribed

RULE 3. Except in the cases hereinafter expressly provided for, a steam vessel when under way shall carry:

(a) On or in front of the foremast, or if a vessel without a foremast, then in the forepart of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so, however, that such height need not exceed forty feet, a bright white light so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side, and of such character as to be visible at a distance of at least five miles.

(b) On the starboard side, a green light, so constructed as to throw an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side, a red light, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side,

*Note 4.*—These rules are to be observed on and after March 1, 1895, by all public and private vessels of the United States on said waters except as otherwise provided for in the act.

and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steamer of over one hundred and fifty feet register length shall also carry when under way an additional bright light similar in construction to that mentioned in subdivision (a), so fixed as to throw the light all around the horizon and of such character to be visible at a distance of at least three miles. Such additional light shall be placed in line with the keel at least fifteen feet higher from the deck and more than seventy-five feet abaft the light mentioned in subdivision (a).

Lights of towing vessels.

RULE 4. A steam vessel having a tow other than a raft shall in addition to the forward bright light mentioned in subdivision (a) of rule three carry in a vertical line not less than six feet above or below that light a second bright light of the same construction and character and fixed and carried in the same manner as the forward bright light mentioned in said subdivision (a) of rule three. Such steamer shall also carry a small bright light abaft the funnel or after mast for the tow to steer by, but such light shall not be visible forward of the beam.

RULE 5. A steam vessel having a raft in tow shall, instead of the forward lights mentioned in rule four, carry on or in front of the foremast, or if a vessel without a foremast then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the beam of the vessel exceeds twenty feet, then at a height above the hull not less than such beam, so however that such height need not exceed forty feet, two bright lights in a horizontal line athwartships and not less than eight feet apart, each so fixed as to throw the light all around the horizon and of such character as to be visible at a distance of at least five miles. Such steamer shall also carry the small bright steering light aft, of the character and fixed as required in rule four.

Lights for vessels towed.

RULE 6. A sailing vessel under way and any vessel being towed shall carry the side lights mentioned in rule three.

A vessel in tow shall also carry a small bright light aft, but such light shall not be visible forward of the beam.

Lights for tugs, etc., on the St. Lawrence.

Tugs, etc., on St. Lawrence.

RULE 7. The lights for tugs under thirty tons register whose principal business is harbor towing, and for boats navigating only on the River Saint Lawrence, also ferry-boats, rafts, and canal boats, shall be regulated by rules which have been or may hereafter be prescribed by the Board of Supervising Inspectors of Steam Vessels.

Lights for small vessels.

RULE 8. Whenever, as in the case of small vessels under way during bad weather, the green and red side lights can not be fixed, these lights shall be kept at hand lighted and ready for use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them

most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. To make the use of these portable lights more certain and easy, they shall each be painted outside with the color of the light they respectively contain, and shall be provided with suitable screens.

Lights for vessels at anchor.

RULE 9. A vessel under one hundred and fifty feet register length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern constructed so as to show a clear, uniform, and unbroken light, visible all around the horizon, at a distance of at least one mile.

A vessel of one hundred and fifty feet or upward in register length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

Lights for produce boats and craft on bays, harbors, and rivers.

Lights for boats on rivers.

RULE 10. Produce boats, canal boats, fishing boats, rafts, or other water craft navigating any bay, harbor, or river by hand power, horse power, sail, or by the current of the river, or which shall be anchored or moored in or near the channel or fairway of any bay, harbor, or river, and not otherwise provided for in these rules, shall carry one or more good white lights, which shall be placed in such manner as shall be prescribed by the Board of Supervising Inspectors of Steam Vessels.

Lights for open boats.

RULE 11. Open boats shall not be obliged to carry the side lights required for other vessels, but shall if they do not carry such lights, carry a lantern having a green slide on one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, and in such a manner that the green light shall not be seen on the port side, nor the red light on the starboard side. Open boats, when at anchor or stationary, shall exhibit a bright white light. They shall not, however, be prevented from using a flare-up in addition if considered expedient.

Lighted troches.

RULE 12. Sailing vessels shall at all times, on the approach of any steamer during the nighttime, show a lighted torch upon that point or quarter to which such steamer shall be approaching.

Lights of vessels of war.

RULE 13. The exhibition of any light on board of a vessel of war or revenue cutter of the United States may be suspended whenever, in the opinion of the Secretary of the Navy, the commander in chief of a squadron, or the commander of a vessel acting singly, the special character of the service may require it.

Fog signals.

RULE 14. A steam vessel shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, placed before the funnel not less than eight feet from the deck, or in such other place as the local inspectors of steam vessels shall determine, and of such character as

to be heard in ordinary weather at a distance of at least two miles, and with an efficient bell, and it is hereby made the duty of the United States local inspectors of steam vessels when inspecting the same to require each steamer to be furnished with such whistle and bell. A sailing vessel shall be provided with an efficient fog horn and with an efficient bell.

Whenever there is thick weather by reason of fog, mist, falling snow, heavy rainstorms, or other causes, whether by day or by night, fog signals shall be used as follows:

(a) A steam vessel under way, excepting only a steam vessel with raft in tow, shall sound at intervals of not more than one minute three distinct blasts of her whistle.

(b) Every vessel in tow of another vessel shall, at intervals of one minute, sound four bells on a good and efficient and properly placed bell as follows: By striking the bell twice in quick succession, followed by a little longer interval, and then again striking twice in quick succession (in the manner in which four bells is struck in indicating time.)

(c) A steamer with a raft in tow shall sound at intervals of not more than one minute a screeching or Modoc whistle for from three to five seconds.

(d) A sailing vessel under way and not in tow shall sound at intervals of not more than one minute—

If on the starboard tack with wind forward of abeam, one blast of her fog horn;

If on the port tack with wind forward of abeam, two blasts of her fog horn;

If she has the wind abaft the beam on either side, three blasts of her fog horn.

(e) Any vessel at anchor and any vessel aground in or near a channel or fairway shall at intervals of not more than two minutes ring the bell rapidly for three to five seconds.

(f) Vessels of less than ten tons registered tonnage, not being steam vessels, shall not be obliged to give the above-mentioned signals, but if they do not they shall make some other efficient sound signal at intervals of not more than one minute.

(g) Produce boats, fishing boats, rafts, or other water craft navigating by hand power or by the current of the river, or anchored or moored in or near the channel or fairway and not in any port, and not otherwise provided for in these rules, shall sound a fog horn, or equivalent signal, at intervals of not more than one minute.

Speed in thick weather.

RULE 15. Every vessel shall, in thick weather, by reason of fog, mist, falling snow, heavy rain storms, or other causes, go at moderate speed. A steam vessel hearing, apparently not more than four points from right ahead, the fog signal of another vessel shall at once reduce her speed to bare steerageway, and navigate with caution until the vessels shall have passed each other.

Steering and sailing rules. Sailing vessels.

RULE 16. When two sailing vessels are approaching one another so as to involve risk of collision one of them shall keep out of the way of the other, as follows, namely:

(a) A vessel which is running free shall keep out of the way of a vessel which is closehauled.

(b) A vessel which is closehauled on the port tack shall keep out of the way of a vessel which is closehauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When they are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

Steam vessels.

RULE 17. When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision each shall alter her course to starboard, so that each shall pass on the port side of the other.

RULE 18. When two steam vessels are crossing so as to involve risk of collision the vessel which has the other on her own starboard side shall keep out of the way of the other.

RULE 19. When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision the steam vessel shall keep out of the way of the sailing vessel.

RULE 20. Where, by any of the rules herein prescribed, one of two vessels shall keep out of the way, the other shall keep her course and speed.

RULE 21. Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

RULE 22. Notwithstanding anything contained in these rules every vessel overtaking any other shall keep out of the way of the overtaken vessel.

RULE 23. In all weathers every steam vessel under way in taking any course authorized or required by these rules shall indicate that course by the following signals on her whistle, to be accompanied whenever required by corresponding alteration of her helm; and every steam vessel receiving a signal from another shall promptly respond with the same signal or, as provided in Rule Twenty-six:

One blast to mean, "I am directing my course to starboard."

Two blasts to mean, "I am directing my course to port." But the giving or answering signals by a vessel required to keep her course shall not vary the duties and obligations of the respective vessels.

Steamers in narrow channels

RULE 24. That in all narrow channels where there is a current, and in the rivers Saint Mary, Saint Clair, Detroit, Niagara, and Saint Lawrence, when two steamers are meeting, the descending steamer shall have the right of way, and shall, before the vessels shall have arrived within the distance of one-half mile of each other, give the signal necessary to indicate which side she elects to take.

RULE 25. In all channels less than five hundred feet in width, no steam vessel shall pass another going in the same direction unless the steam vessel ahead be disabled or sig-

nify her willingness that the steam vessel astern shall pass, when the steam vessel astern may pass, subject, however, to the other rules applicable to such a situation. And when steam vessels proceeding in opposite directions are about to meet in such channels, both such vessels shall be slowed down to a moderate speed, according to the circumstances.

Direct signals.

RULE 26. If the pilot of a steam vessel to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approaching steamer, whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse.

Immediate danger.

RULE 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Negligence.

RULE 28. Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of a neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Fines.

SEC. 2. That a fine, not exceeding two hundred dollars, may be imposed for the violation of any of the provisions of this Act. The vessel shall be liable for the said penalty, and may be seized and proceeded against, by way of libel, in the district court of the United States for any district within which such vessel may be found.

Authority to make regulations.

SEC. 3. That the Secretary of the Treasury of the United States shall have authority to establish all necessary regulations, not inconsistent with the provisions of this Act, required to carry the same into effect.

The Board of Supervising Inspectors of the United States shall have authority to establish such regulations to be observed by all steam vessels in passing each other, not inconsistent with the provisions of this Act, as they shall from time to time deem necessary; and all regulations adopted by the said Board of Supervising Inspectors under the authority of this Act, when approved by the Secretary of the Treasury, shall have the force of law. Two printed copies of any such regulations for passing, signed by them, shall be furnished to each steam vessel, and shall at all times be kept posted up in conspicuous places on board.

Repeal of rules.

SEC. 4. That all laws or parts of laws, so far as applicable to the navigation of the Great Lakes and their connecting

and tributary waters as far east as Montreal, inconsistent with the foregoing rules are hereby repealed.

SEC. 5. That this Act shall take effect on and after March first, eighteen hundred and ninety-five.

## DIPLOMATIC AND CONSULAR OFFICERS.

[*See also* MERCHANT VESSELS and SERVICE.]

Sec.
1433. Navy officers temporarily exercising consular powers.
1440. Accepting appointments vacates Navy commission.
1674. Official designations, consular and diplomatic service.
1707. Protests.
1708. Lists and returns of seamen, vessels, etc.
1709. Estates of decedents.
1710. Notification of death.
1711. Decedent's directions to be followed.
1737. False certificate of property.
1738. When consular officers may perform diplomatic functions.
1750. Depositions.
1751. Certain correspondence prohibited.

Title 15, chap. 2.

Consular powers.

Feb. 20, 1845, s. 2, v. 5, p. 725.

SEC. 1433. The commanding officer of any fleet, squadron, or vessel acting singly, when upon the high seas or in any foreign port where there is no resident consul of the United States, shall be authorized to exercise all the powers of a consul in relation to mariners of the United States.

Accepting appointments in diplomatic service.

Mar. 30, 1868, s. 2, v. 15, p. 58.

SEC. 1440. If any officer of the Navy accepts or holds an appointment in the diplomatic or consular service of the Government, he shall be considered as having resigned his place in the Navy, and it shall be filled as a vacancy.

Title 18, chap. 1.

Definition of official designations employed in this title.

Aug. 18, 1856, s. 1, v. 11, p. 64; June 20, 1864, s. 1, v. 13, p. 138; July 25, 1866, v. 14, p. 225.

SEC. 1674. The official designations employed throughout this Title shall be deemed to have the following meanings, respectively:

First. "Consul-general," "consul," and "commercial agent," shall be deemed to denote full, principal, and permanent consular officers, as distinguished from subordinates and substitutes.

Second. "Deputy consul" and "consular agent" shall be deemed to denote consular officers subordinate to such principals, exercising the powers and performing the duties within the limits of their consulates or commercial agencies respectively, the former at the same ports or places, and the latter at ports or places different from those at which such principals are located respectively.

Third. "Vice-consuls," and "vice commercial agents," shall be deemed to denote consular officers, who shall be substituted, temporarily, to fill the places of consuls-general, consuls, or commercial agents, when they shall be temporarily absent or relieved from duty.

Fourth. "Consular officer" shall be deemed to include consuls-general, consuls, commercial agents, deputy consuls, vice-consuls, vice-commercial agents, and consular agents, and none others.

Fifth. "Diplomatic officer" shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, agents, and secretaries of legation, and none others.

[By section 4130 R. S. as amended, the word "minister" is understood to mean the person invested with, and

exercising the principal diplomatic functions. The word "consul" is understood to mean any person invested by the United States with, and exercising the functions of Consul-General, Vice-Consul-General, Consul or Vice-Consul.]

Title 18, chap. 2.

Protests.
Apr. 14, 1792, s. 2, v. 1, p. 255.

SEC. 1707. Consuls and vice-consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States. Copies of such acts duly authenticated by consuls or vice-consuls, under the seal of their consulates, respectively, shall be received in evidence equally with their originals in all courts in the United States.

Lists and returns of seamen, vessels, etc.
Aug. 18, 1856, s. 27, v. 11, p. 62.
See secs. 4561, 4580, under Merchant Service.

SEC. 1708. Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of the Treasury.

Estates of decedents.
Apr. 14, 1792, s. 2, v. 1, p. 255.

SEC. 1709. It shall be the duty of consuls and vice-consuls, where the laws of the country permit:

First. To take possession of the personal estate left by any citizen of the United States, other than seamen belonging to any vessel, who shall die within their consulate, leaving there no legal representative, partner in trade, or trustee by him appointed to take care of his effects.

Second. To inventory the same with the assistance of two merchants of the United States, or, for want of them, of any others at their choice.

Third. To collect the debts due the deceased in the country where he died, and pay the debts due from his estate which he shall have there contracted.

Fourth. To sell at auction, after reasonable public notice, such part of the estate as shall be of a perishable nature, and such further part, if any, as shall be necessary, for the payment of his debts, and, at the expiration of one year, from his decease, the residue.

Fifth. To transmit the balance of the estate to the Treasury of the United States, to be holden in trust for the legal claimant; except that if at any time before such transmission the legal representative of the deceased shall appear and demand his effects in their hands they shall deliver them up, being paid their fees, and shall cease their proceedings.

Notification of death.
Idem.

SEC. 1710. For the information of the representative of the deceased, the consul or vice-consul, in the settlement

of his estate, shall immediately notify his death in one of the gazettes published in the consulate, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased, taken as before directed.

Decedent's directions to be followed. Aug. 18, 1856, s. 28, v. 11, p. 63.

SEC. 1711. When any citizen of the United States, dying abroad, leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer of the port or place where he dies, of the personal property of which he dies possessed in such country, such officer shall, so far as the laws of the country permit, strictly observe such directions. When any such citizen so dying, appoints, by any lawful testamentary disposition, any other person than such officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so appointed, to give his official aid in whatever way may be necessary to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country permit, to protect the property of the deceased from any interference of the local authorities of the country where such citizen dies; and to this end it shall be the duty of such consular officer to place his official seal upon all of the personal property or effects of the deceased, and to break and remove such seal as may be required by such person, and not otherwise.

False certificate of property. Feb. 28, 1803, s. 7, v. 2, p. 204.

SEC. 1737. If any consul, vice-consul, commercial agent, or vice-commercial agent falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he shall be punishable by imprisonment for not more than three years and by a fine of not more than ten thousand dollars.

When consular officers may perform diplomatic functions. Aug. 18, 1856, s. 12, v. 11, p. 56. See sec. 5335, under Treason.

SEC. 1738. No consular officer shall exercise diplomatic functions, or hold any diplomatic correspondence or relation on the part of the United States, in, with, or to the Government or country to which he is appointed, or any other country or Government, when there is in such country any officer of the United States authorized to perform diplomatic functions therein; nor in any case, unless expressly authorized by the President so to do.

Title 18, chap. 3.

Depositions.

SEC. 1750. Every Secretary of legation and consular officer is hereby authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his legation, consulate, or commercial agency, to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done, by or before

any other person within the United States duly authorized and competent thereto. If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined in a sum not to exceed three thousand dollars, and may be charged, proceeded against, tried, convicted, and dealt with, therefor, in the district where he may be arrested or in custody.

Penalty for perjury in such cases.

Evidence of taking the oath.

Penalty for forging certificate of oath.

Aug. 18, 1856, s. 24, v. 11, p. 61.

See secs. 5392, 5393, Perjury.

Certain correspondence by officers prohibited.

Ibid., s. 19, p. 59.

See June 17, 1874.

SEC. 1751. No diplomatic or consular officer shall correspond in regard to the public affairs of any foreign Government with any private person, newspaper, or other periodical, or otherwise than with the proper officers of the United States, nor recommend any person, at home or abroad, for any employment of trust or profit under the Government of the country in which he is located; nor ask nor accept, for himself or any other person, any present, emolument, pecuniary favor, office, or title of any kind, from any such Government.

June 17, 1874.

Nor shall any diplomatic or consular officer correspond in regard to the public affairs of any foreign Government with any private person, newspaper, or other periodical, or otherwise than with the proper officers of the United States; nor without the consent of the Secretary of State previously obtained, recommend any person at home or abroad for any employment or trust or profit under the Government of the country in which he is located; nor ask or accept for himself or any other person, any present, emolument, pecuniary favor, office, or title of any kind from any such Government.

Certain correspondence forbidden.

Not to recommend persons for employment or accept titles or presents.

June 17, 1874, v. 18, p. 77.

See Bribes, presents, and contributions, Division IV.

## EXPATRIATION.

Sec.
1999. Right of expatriation declared.
2000. Protection of naturalized citizens in foreign countries.
2001. Release of citizens imprisoned by foreign governments.

Title 25.

Right of expatriation declared. July 27, 1868, s. 1, v. 15, p. 223.

SEC. 1999. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

Protection to naturalized citizens in foreign states. Ibid., s. 2, p. 224.

SEC. 2000. All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.

Release of citizens imprisoned by foreign governments to be demanded. Ibid., s. 3, p. 224.

SEC. 2001. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

## EXTRADITION.

Sec.
5270. Fugitives from the justice of a foreign country.
——. Act Aug. 3, 1882. Evidence on the hearing.
5272. Surrender of the fugitive.
5273. Time allowed for extradition.
5274. Continuance of provisions limited.
5275. Protection of the accused.
5276. Powers of agent receiving offenders delivered by a foreign government.
5277. Penalty for opposing agent, etc.
5278. Fugitives from justice of a State or Territory.
5279. Penalty for resisting agent, etc.
5280. Arrest of deserting seamen from foreign vessels.
5409. Allowing prisoners to escape.
5410. Application of preceding section.

Title 66.

Fugitives from the justice of a foreign country. Aug. 12, 1848, s. 1, v. 9, p. 302.

SEC. 5270. Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or

judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, district, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Aug. 3, 1882.

Supp. R. S., 22 Stat. L., 215, 1874 to 1891.

Evidence on hearing.

Substitute for R. S., sec. 5271.

14 How., 115; 5 Blatch., 414; 7 Blatch., 345; 14 Blatch., 137; 30 Blatch., 59; 4 Dill., 412, 416; 4 Fed. Rep., 303; 16 Fed. Rep., 333; 22 Fed. Rep., 699.

SEC. 5. That in all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statutes of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper or copies thereof, so offered, are authenticated in the manner required by this act.

Repeal of R. S., sec. 5271, and 1876, June 19, ch. 133 (19 Stat. L., 59).

SEC. 6. The act approved June nineteenth, eighteen hundred and seventy-six, entitled "An act to amend section fifty-two hundred and seventy-one of the Revised Statutes of the United States", and so much of said section fifty-two hundred and seventy-one of the Revised Statutes of the United States as is inconsistent with the provisions of this act are hereby repealed.

Surrender of the fugitive.

Aug. 12, 1848, s. 3, v. 9, p. 302.

See secs. 5409, 5410.

SEC. 5272. It shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person

in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape.

Time allowed for extradition. Idem, s. 4.

SEC. 5273. Whenever any person who is committed under this title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

Continuance of provisions limited. Idem, s. 5.

SEC. 5274. The provisions of this Title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign Government, and no longer.

Protection of the accused. Mar. 3, 1869, s. 1, v. 15, p. 337.

SEC. 5275. Whenever any person is delivered by any foreign Government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

Powers of agent receiving offenders delivered by a foreign Government. Idem, s. 2.

SEC. 5276. Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign Government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

Penalty for opposing agent, etc. Idem, s. 3.

SEC. 5277. Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

Fugitives from justice of a State or Territory.

SEC. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice,

Feb. 12, 1793, s. 1, v. 1, p. 302.

of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

Penalty for resisting agent, etc.
Idem, s. 2.
See sec. 5409.

SEC. 5279. Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.

Arrest of deserting seamen from foreign vessels.
Mar. 2, 1829, ch. 41, v. 4, p. 359; Feb. 24, 1855, ch. 123, v. 10, p. 614.

SEC. 5280. On application of a consul or vice-consul of any foreign government having a treaty with the United States stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged, at the time of desertion, to the crew of such vessel, it shall be the duty of any court, judge, commissioner of any circuit court, justice, or other magistrate, having competent power, to issue warrants to cause such person to be arrested for examination. If, on examination, the facts stated are found to be true, the person arrested not being a citizen of the United States, shall be delivered up to the consul or vice-consul, to be sent back to the dominions of any such government, or, on the request and at the expense of the consul or vice-consul, shall be detained until the consul or vice-consul finds an opportunity to send him back to the dominions of any such government. No person so arrested shall be detained more than two months after his arrest; but at the end of that time shall be set at liberty, and shall not be again molested for the same cause. If any such deserter shall be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which the case shall be depending, or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect.

Title 70, chap. 4.

Allowing prisoners to escape. June 21, 1860, v. 12, p. 69.

SEC. 5409. Whenever any marshal, deputy marshal, ministerial officer, or other person, has in his custody any prisoner by virtue of process issued under the laws of the United States by any court judge, or commissioner, and such marshal, deputy marshal, ministerial officer, or other person, voluntarily suffers such prisoner to escape, he shall be fined not more than two thousand dollars, or imprisoned for a term not more than two years, or both.

Application of preceding section. Ibid.

SEC. 5410. The preceding section shall be construed to apply not only to cases in which the prisoner who escaped was charged or found guilty of an offense against the laws of the United States, but also to cases in which a prisoner may be in custody charged with offenses against any foreign government with which the United States have treaties of extradition.

## FISH COMMISSIONER.

Sec.
Act Jan. 20, 1888. Appointment of Commissioner of Fish and Fisheries.
Act Mar. 3, 1885. Details from Revenue Marine.
Act Mar. 3, 1883. Assistant Fish Commissioner.
4396. Duties of Commissioner.
Sec.
4397. Executive Department to aid investigation.
4398. Powers of Commissioner.
Act June 5, 1894. Fur Seals. Penalty for infraction of law in regard to.
Act Mar. 3, 1893. Fur seals of Bering Sea.

Jan. 20, 1888.

25 Stat. L., 1. Fish Commissioner—appointment and salary. Substitute for R. S., sec. 4395. 1881, Feb. 14, Res. No. 12, p. 328; 1882, Aug. 7, ch. 433, par. 15, p. 382; 1883, Mar. 3, ch. 143, par. 7, p. 421; 1885, Mar. 3, ch. 360, par. 1, p. 486; 1887, Mar. 3, ch. 362, par. 3, p. 563.

That section four thousand three hundred and ninety-five of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

That there shall be appointed by the President, by and with the advice and consent of the Senate, a person of scientific and practical acquaintance with the fish and fisheries to be a Commissioner of Fish and Fisheries, and he shall receive a salary at the rate of five thousand dollars a year, and he shall be removable at the pleasure of the President.

Said Commissioner shall not hold any other office or employment under the authority of the United States or any State.

Mar. 3, 1883.

22 Stat. L., 603. Assistant Fish Commissioner. R. S., sec. 4395. 1888, Jan. 20, ch. 1, p. 577.

[*Par* 7.] And the Commissioner of Fish and Fisheries is hereby authorized to designate, from the employees of the Commission, an assistant, to discharge his duties in case of his absence or disability:

*Provided*, That no increase of pay shall be granted in consequence of such selection. * * *

Mar. 3, 1885.

23 Stat. L., 478. Details from Revenue Marine for Fish Commission. R. S., secs. 2747-2765, 4396. 1888, Jan. 20, ch. 1, p. 577.

[*Par*. 1.] The Secretary of the Treasury is authorized to detail from time to time for duty under the Commissioner of Fish and Fisheries any officers and men of the Revenue Marine Service whose services can be spared for such duty. * * *

Duties of the Commissioner. Feb. 9, 1871, s. 2, v. 16, p. 594. See Revenue-Cutter Service, Division IV.

SEC. 4396. The Commissioner of Fish and Fisheries shall prosecute investigations and inquiries on the subject, with the view of ascertaining whether any and what diminution in the number of the food-fishes of the coast and the lakes of the United States has taken place; and, if so, to what causes the same is due; and also whether any and what protective, prohibitory, or precautionary measures should be adopted in the premises; and shall report upon the same to Congress.

Executive Departments to aid investigations. Ibid., s. 3.

SEC. 4397. The heads of the several Executive Departments shall cause to be rendered all necessary and practicable aid to the Commissioner in the prosecution of his investigations and inquiries.

Powers of Commissioner. Ibid., s. 4.

SEC. 4398. The Commissioner may take or cause to be taken at all times, in the waters of the sea-coast of the United States, where the tide ebbs and flows, and also in the waters of the lakes, such fish or specimens thereof as may in his judgment, from time to time, be needful or proper for the conduct of his duties, any law, custom, or usage of any State to the contrary notwithstanding.

Mar. 3, 1893.

27 Stat. L., 572.

Investigation of seal life on Pribilof Island.

Fur seals of Bering Sea.

See notes 1 and 2.

And the Commissioner of Fisheries is authorized and required to investigate, under the direction of the Secretary of the Treasury, and when so requested and report annually to him regarding the conditions of seal life upon the rookeries of the Pribilof Island; and he is also directed to continue the inquiries relative to the life history and migrations of the fur seals frequenting the waters of Bering Sea. * * *

Fur seals. Cooperation of other powers in protecting. Treaty, 1892, Feb. 29, Art. VII (27 Stat. L., 950).

Whereas by the seventh article of the treaty between the United States and Great Britain, concluded at Washington, February twenty-ninth, eighteen hundred and ninety-two, in relation to the preservation of the fur seal, the high contracting parties agree to co-operate in securing the adhesion of other powers to such regulations as the arbitrators under said treaty might determine upon for that purpose; and

Penalties for infractions. 1894, Apr. 6, ch. 57, p. 177.

See notes 3 and 4.

Whereas by an Act of Congress approved April sixth, eighteen hundred and ninety-four, provision has been made by the United States for the execution of the regulations so determined upon and for the punishment of any infractions of said regulations: Therefore,

Procedure and penalties extended.

*Be it enacted, &c.*, That the procedure and penalties provided by said Act, in case of the violation of the provisions of said regulations, are hereby made applicable to and shall be enforced against any citizen of the United States, or person owing the duty of obedience to the laws or the treaties of the United States, or person belonging to or on board of a vessel of the United States who shall kill, capture, or pursue, at any time or in any manner whatever, as well as to and against any vessel of the United States used or employed in killing, capturing, or pursuing, at any time or in any manner whatever, any fur seal or other marine fur-bearing animal,

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Fish Commission.

Laws relating to seals.

*Note 1.*—See note to 1892, August 5, ch. 380, par. 3, for review of laws relating to Fish Commission.

*Note 2.*—For other laws relating to seals, see R. S., secs. 1956–1958, forbidding the killing of fur seals, except by proper authority; R. S., secs. 1959–1976, and 1874, Mar. 24, ch. 64 (1 Supp. R. S., 6), regulating the killing of fur seals; 1875, Mar. 3, ch. 130, par. 6 (1 Supp. R. S., 73), and 1876, July 31, ch. 246, par. 6 (1 Supp. R. S., 115), relative to agents at seal fisheries; 1884, May 17, ch. 53, sec. 5 (1 Supp. R. S., 432), directing the governor of Alaska to inquire into the operations of the Alaska Seal and Fur Company; 1889, Mar. 2, ch. 415, sec. 3 (1 Supp. R. S., 701), extending prohibition of killing seals to Bering Sea and requiring proclamation and patrol against violations. See 143 U. S., 472. 1893, Feb. 21, ch. 150, extending seal protection laws to North Pacific Ocean. See also treaty with Great Britain of arbitration of questions relating to seals in Bering Sea (27 Stat. L., 952).

June 5, 1894. 28 Stat. L., 85.

*Note 3.*—See 1894, June 5, ch. 91, p. 190, extending the provisions of this act to violations of any treaty or convention with any other power than Great Britain. See also proclamation of President, 1893, Apr. 8 (27 Stat., L., 1070).

*Note 4.*—The word "exclusive" changed to "inclusive" by 1894, Apr. 24, ch. 63, p. 181.

in violation of the provisions of any treaty or convention into which the United States may have entered or may hereafter enter with any other power for the purpose of protecting fur seals or other marine fur-bearing animals, or in violation of any regulations which the President may make for the due execution of such treaty or convention.

—to violations of other treaties on same subject.

—or regulations by President.

## FLAGS AND STANDARDS.

Sec.
1554. Captured flags.
1555. Display of captured flags.
1791. The flag to be 13 stripes and 37 stars.
1792. A star to be added for every new State.

SEC. 1554. The Secretary of the Navy shall cause to be collected and transmitted to him, at the seat of Government of the United States, all such flags, standards, and colors as shall have been or may hereafter be taken by the Navy from enemies.

Title 15, chap. 7.

Captured flags. Apr. 18, 1814, s. 1, v. 3, p. 133.

SEC. 1555. All flags, standards, and colors of the description mentioned in the foregoing section, which are now in the possession of the Navy Department, or may hereafter be transmitted to it, shall be delivered to the President, for the purpose of being, under his direction, preserved and displayed in such public place as he may deem proper.

Idem.

SEC. 1791. The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be thirty-seven stars, white in a blue field.

Title 20.

The flag to be 13 stripes and 37 stars. Jan. 13, 1794, v. 1, p. 314; Apr. 4, 1818, s. 1, v. 3, p. 415.

SEC. 1792. On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission.

A star to be added for every new State. Apr. 4, 1818, s. 2, v. 3, p. 415.

## FRAUD, FORGERY, THEFT, ETC.

Sec.
183. Clerks investigating frauds may administer oath.
5394. Stealing process, etc.
5418. Forging, etc., bid, publicrecord, etc.
5421. Forging deed, power of attorney, etc.
5422. Having forged papers in possession.
5435. False personation.
5436. False demand on fraudulent power of attorney.
5438. Making or presenting false claims.
5439. Embezzling arms, stores, etc.
Act May 17, 1879. All parties to a conspiracy equally guilty.
5441. Delaying or defrauding captor or claimant, etc., of prize-property.
5456. Robbery or larceny of personal property of the United States.
5479. Counterfeiting or forging bids, bonds, etc.
Act Mar. 3, 1875. Larcenies and stolen goods.

SEC. 183. Any officer or clerk of any of the Departments lawfully detailed to investigate frauds or attempts to defraud on the Government, or any irregularity or misconduct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.

Title 4.

Oaths, when administered by officers, etc. Apr. 10, 1869, res. 15, s. 2, v. 16, p. 55; Mar. 7, 1870, chap. 23, v. 16, p. 75.

SEC. 5394. Every person who feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made

Title 70, chap. 4.

Stealing or altering process, procuring false bail, etc.

Apr. 30, 1790, s. 15, v. 1, p. 115; June 22, 1874, s. 19, v. 18, p. 190.

void, or does not take effect, and every person who acknowledges, or procures to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars or be imprisoned at hard labor not more than seven years; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly admitted for any person against whom any such judgment is had or given.

Title 70, chap. 5.

Forging, etc., bid, public record, etc.

Apr. 5, 1866, s. 1, v. 14, p. 12.

See sec. 5479.

SEC. 5418. Every person who falsely makes, alters, forges, or counterfeits any bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, or utters or publishes as true any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for such purpose, knowing the same to be false, forged, altered, or counterfeited, or transmits to or presents at the office of any officer of the United States any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for such purpose, shall be imprisoned at hard labor for a period not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

Forging deed, power of attorney, etc.

Mar. 3, 1823, s. 1, v. 3, p. 771.

SEC. 5421. Every person who falsely makes, alters, forges, or counterfeits; or causes or procures to be falsely made, altered, forged, or counterfeited; or willingly aids or assists in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money; or who utters or publishes as true, or causes to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or who transmits to, or presents at, or causes or procures to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be imprisoned at hard labor for a period of not less than one year nor more than ten years; or shall be imprisoned not more than five years, and fined not more than one thousand dollars.

Having forged papers in possession.

Ibid., s. 2, p. 772.

SEC. 5422. Every person who, knowingly and with intent to defraud the United States, has in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, or other writing, for the purpose of enabling another to obtain from the United States, or any of their officers or agents, any sum of money, shall be fined and imprisoned at the discretion of the court.

SEC. 5435. Every person who falsely personates any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize-money, wages, or other debt due from the United States, and, under color of such false personation, transfers or endeavors to transfer such public stock or any part thereof, or receives or endeavors to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize-money, wages, or other debt, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than ten years.

False personation of holder of public stocks. Mar. 3, 1825, s. 18, v. 4, p. 120.

SEC. 5436. Every person who knowingly or fraudulently demands or endeavors to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize-money, wages, or other debt due from the United States, or any part thereof, received or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than ten years.

False demand on fraudulent power of attorney. Ibid.

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any Department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any Department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into

Making or presenting false claims. Mar. 2, 1863, ss. 1, 3, v. 12, pp. 696, 698. See secs. 3490, 3491, under Claims.

or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

Embezzling arms, stores, etc. Ibid.

SEC. 5439. Every person who steals or embezzles, or knowingly applies to his own use, or who unlawfully sells, conveys, or disposes of, any ordnance, arms, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section.

May 17, 1879.

21 Stat. L., 4.

All parties to conspiracy liable for act of one.

Substitute for R. S., sec. 5440; 100 U. S., 33; 127 U.S., 749; 1 Lowell, 266; 11 Blatch., 168; 16 Blatch., 15, 21; 2 Woods, 175, 749.

That section fifty-four hundred and forty of the Revised Statutes of the United States of America be amended so as to read as follows:

If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court.

Delaying or defrauding captor or claimant, etc., of prize property.

June 30, 1864, s. 31, v. 13, p. 315.

See secs. 4613-4652, Prize.

SEC. 5441. Every person who willfully does any act or aids or advises in the doing of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment not more than five years, or both.

Robbery or larceny of personal property of the United States.

Mar. 2, 1867, ch. 193, v. 14, p. 557.

SEC. 5456. Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one nor more than ten years, or by both such fine and imprisonment.

Counterfeiting bid, bond, etc.

June 8, 1872, s. 294, v. 17, p. 320; Feb. 27, 1877, ch. 69, v. 19, p. 253.

See sec. 5418.

SEC. 5479. If any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or

other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause *to or* procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such punishments.

Mar. 3, 1875.

Embezzling, stealing, etc., from United States deemed felony; penalty.

That any person who shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be deemed guilty of felony, and on conviction thereof before the district or circuit court of the United States in the district wherein said offense may have been committed, or into which he shall carry or have in possession of said property so embezzled, stolen, or purloined, shall be punished therefor by imprisonment at hard labor in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or both, at the discretion of the court before which he shall be convicted.

Knowingly receiving, concealing, etc., stolen, etc., property of the United States; penalty.

SEC. 2. That if any person shall receive, conceal, or aid in concealing, or have, or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined from the United States by any other person, knowing the same to have been so embezzled, stolen, or purloined, such person shall, on conviction before the circuit or district court of the United States in the district wherein he may have such property, be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor in the penitentiary not exceeding five years, one or both, at the discretion of the court before which he shall be convicted; and such receiver may be tried either before or after the conviction of the principal felon, but if the party has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against such receiver that the property of the United States therein described has been embezzled, stolen, or purloined.

May be tried before or after conviction of principal.

## GUANO ISLANDS.

Sec.
5570. Claim of United States to islands.
5571. Notice of discovery, and proofs to be furnished.
5572. Completion of proof in case of death of discoverer.
5573. Exclusive privileges of discoverer.
5574. Restrictions upon exportation.
5575. Regulation of guano trade.
5576. Criminal jurisdiction.
5577. Employment of land and naval forces.
5578. Right to abandon island.

Title 72.

Claim of United States to islands. Aug. 18, 1856, s. 1, v. 11, p. 119.

SEC. 5570. Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and

takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.

Notice of discovery, and proofs to be furnished. Ibid.

SEC. 5571. The discoverer shall, as soon as practicable, give notice, verified by affidavit, to the Department of State, of such discovery, occupation, and possession, describing the island, rock, or key, and the latitude and longitude thereof, as near as may be, and showing that such possession was taken in the name of the United States; and shall furnish satisfactory evidence to the State Department that such island, rock, or key was not, at the time of the discovery thereof, or of the taking possession and occupation thereof by the claimants, in the possession or occupation of any other government or of the citizens of any other government, before the same shall be considered as appertaining to the United States.

Completion of proof in case of death of discoverer. Apr. 2, 1872, s. 1, v. 17, p. 48.

SEC. 5572. If the discoverer dies before perfecting proof of discovery or fully complying with the provisions of the preceding section, his widow, heir, executor, or administrator, shall be entitled to the benefits of such discovery, upon complying with the provisions of this Title; but nothing herein shall be held to impair any rights of discovery or any assignment by a discoverer heretofore recognized by the United States.

Exclusive privileges of discoverer. Aug. 18, 1856, s. 2, v. 11, p. 119.

SEC. 5573. The discoverer, or his assigns, being citizens of the United States, may be allowed, at the pleasure of Congress, the exclusive right of occupying such islands, rock, or keys, for the purpose of obtaining guano, and of selling and delivering the same to citizens of the United States, to be used therein, and may be allowed to charge and receive for every ton thereof delivered alongside a vessel, in proper tubs, within reach of ship's tackle, a sum not exceeding eight dollars per ton for the best quality, or four dollars for every ton taken while in its native place of deposit.

Restrictions upon exportation. July 28, 1866, s. 3, v. 14, p. 328; Apr. 2, 1873, s. 1, v. 17, p. 48.

SEC. 5574. No guano shall be taken from any such island, rock, or key, except for the use of the citizens of the United States, or of persons resident therein. The discoverer, or his widow, heir, executor, administrator, or assigns, shall enter into bond, in such penalty and with such sureties as may be required by the President, to deliver the guano to citizens of the United States, for the purpose of being used therein, and to none others, and at the price prescribed, and to provide all necessary facilities for that purpose within a time to be fixed in the bond; and any breach of the provisions thereof shall be deemed a forfeiture of all rights accruing under and by virtue of this Title. This section shall, however, be suspended in relation to all persons who have complied with the provisions of this Title, for five years from and after the fourteenth day of July, eighteen hundred and seventy-two.

Regulation of guano trade. Aug. 18, 1856, s. 3, v. 11, p. 120.

SEC. 5575. The introduction of guano from such islands, rocks, or keys, shall be regulated as in the coasting-trade between different parts of the United States, and the same laws shall govern the vessels concerned therein.

SEC. 5576. All acts done, and offenses or crimes committed, on any such island, rock, or key, by persons who may land thereon, or in the waters adjacent thereto, shall be deemed committed on the high seas, on board a merchant-ship or vessel belonging to the United States; and shall be punished according to the laws of the United States relating to such ships or vessels and offenses on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks, and keys.

Criminal jurisdiction. Ibid., s. 6.

SEC. 5577. The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or of his widow, heir, executor, administrator, or assigns.

Employment of land and naval forces. Ibid., s. 5.

SEC. 5578. Nothing in this Title contained shall be construed as obliging the United States to retain possession of the islands, rocks, or keys, after the guano shall have been removed from the same.

Right to abandon islands. Ibid., s. 4.

## HABEAS CORPUS.

Sec.
751. Power of courts to issue writs of habeas corpus.
752. Power of judges to grant writs of habeas corpus.
753. Writs of habeas corpus when prisoner is in jail.
754. Application for the writ of habeas corpus.
755. Allowance and direction of the writ.
756. Time of return.
757. Form of return.
758. Body of the party to be produced.
759. Day for hearing.
760. Denial of return, counter-allegations, amendments.
761. Summary hearing; disposition of party.
762. In cases involving the law of nations, notice to be served on State attorney-general.
763. Appeals in cases of habeas corpus to circuit court.
Act Mar. 3, 1885. Appeal to Supreme Court.
765. Appeals, how taken.
766. Pending proceedings in certain cases, action by State authority void.
Act Mar. 3, 1893. Habeas corpus cases, etc.

Title 18, chap. 13.

SEC. 751. The Supreme Court and the circuit and district courts shall have power to issue writs of habeas corpus.

Power of courts to issue writs of habeas corpus. Sept. 24, 1789, s. 14, v. 1, p. 81; Apr. 10, 1869, s. 2, v. 16, p. 44; Mar. 2, 1833, s. 7, v. 4, p. 634; Feb. 5, 1867, s. 1, v. 14, p. 385; Aug. 29, 1842, s. 1, v. 5, p. 539.

SEC. 752. The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

Power of judges to grant writs of habeas corpus. Idem.

SEC. 753. The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled

Writ of habeas corpus when prisoner is in jail. Idem.

therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify.

Application for the writ of habeas corpus. Feb. 5, 1867, s. 1, v. 14, p. 385.

SEC. 754. Application for a writ of habeas corpus shall be made to the court or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application.

Allowance and direction of the writ. Idem.

SEC. 755. The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appear, from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.

Time of return. Idem.

SEC. 756. Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days.

Form of return. Idem.

SEC. 757. The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party.

Body of the party to be produced. Idem.

SEC. 758. The person making the return shall at the same time bring the body of the party before the judge who granted the writ.

Day for hearing. Idem.

SEC. 759. When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time.

Denial of return, counter-allegations, amendments. Idem.

SEC. 760. The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any other facts that may be material in the case. Such denials or allegations shall be under oath. The return and all suggestions made against it may be amended, by leave of the court, or justice, or judge, before or after the same are filed, so that thereby the material facts may be ascertained.

Summary hearing; disposition of party. Idem.

SEC. 761. The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.

In cases involving the law of nations notice to be served on State attorney-general. Aug. 29, 1842, v. 5, p. 539.

SEC. 762. When a writ of habeas corpus is issued in the case of any prisoner who, being a subject or citizen of a foreign state and domiciled therein, is committed, or confined, or in custody, by or under the authority or law of any one of the United States, or process founded thereon, on account of any act done or omitted under any alleged

right, title, authority, privilege, protection, or exemption claimed under the commission or order or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations, notice of the said proceeding, to be prescribed by the court, or justice, or judge at the time of granting said writ, shall be served on the attorney-general or other officer prosecuting the pleas of said State, and due proof of such service shall be made to the court, or justice, or judge before the hearing.

Appeals in cases of habeas corpus to circuit court.

Aug. 29, 1842, v. 5, p. 539; Feb. 5, 1867, s. 1, v. 14, p. 385; Mar. 27, 1868, s. 2, v. 15, p. 44.

SEC. 763. From the final decision of any court, justice, or judge inferior to the circuit court, upon an application for a writ of habeas corpus or upon such writ when issued, an appeal may be taken to the circuit court for the district in which the cause is heard:

1. In the case of any person alleged to be restrained of his liberty in violation of the Constitution, or of any law or treaty of the United States.

2. In the case of any prisoner who, being a subject or citizen of a foreign state, and domiciled therein, is committed or confined, or in custody by or under the authority or law of the United States, or of any State, or process founded thereon, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, order, or sanction of any foreign state or sovereignty, the validity and effect whereof depend upon the law of nations, or under color thereof.

Mar. 3, 1895.

23 Stat. L., 437.

Appeals to Supreme Court in habeas corpus cases.

Substitute for R. S., sec. 764; R. S., sec. 763; 1891, Mar. 3, ch. 517, p. 901; 114 U. S., 564; 117 U. S., 241; 119 U. S., 586; 121 U. S., 89.

That section seven hundred and sixty-four of the Revised Statutes be amended so that the same shall read as follows:

"From the final decision of such circuit court an appeal may be taken to the Supreme Court in the cases described in the preceding section."

Appeals, how taken.

Aug. 29, 1842, v. 5, p. 539; Feb. 5, 1867, s. 1, v. 14, p. 385.

SEC. 765. The appeals allowed by the two preceding sections shall be taken on such terms, and under such regulations and orders, as well for the custody and appearance of the person alleged to be in prison or confined or restrained of his liberty, as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or, in default thereof, by the court or judge hearing the cause.

Pending proceedings in certain cases, action by State authority void.

Idem.

See act Mar. 3, 1893, amending this section.

SEC. 766. Pending the proceedings or appeal in the cases mentioned in the three preceding sections, and until final judgment therein, and after final judgment of discharge, any proceeding against the person so imprisoned or confined or restrained of his liberty, in any State court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, shall be deemed null and void.

Mar. 3, 1893.

27 Stat. L., 751.
Habeas corpus cases; appeals to be taken in six months.
R. S., sec. 766.
See note 1.

That section seven hundred and sixty-six of the Revised Statutes be amended by adding thereto, at the end of said section, the following words:

"*Provided*, That no such appeal shall be had or allowed after six months from the date of the judgment or order complained of."

## HOMESTEADS.


Sec.
Act Mar. 3, 1891. Who may enter certain unappropriated public lands.
2293. Persons in military or naval service, when and before whom to make affidavit.
2296. Homestead lands not to be subject to prior debts.
2298. Limitation of amount entered for homestead.
2300. What minors may have the privileges of this chapter.
Act Mar. 3, 1891. Payment before expiration of five years, rights of applicant.
Sec.
2304. Soldiers' and sailors' homestead.
2305. Deduction of military and naval service from time, etc.
2308. Actual service in the Army or Navy equivalent to residence, etc.
2309. Who may enter by agent.
Act May 6, 1886. Homestead settlers, etc.
Act Mar. 2, 1889. What public lands subject to private entry.
Act Dec. 29, 1894. Settlers may enter, etc.


Mar. 3, 1891.

26 Stat. L., 1095.
Who may make homestead entries.
Substitute for R. S., secs. 2289, 2290.
1890, May 2, ch. 182, s. 20, p. 729; May 20, 1862, s. 1. v. 12, p. 392; Feb. 11, 1874, ch. 25, v. 18, p. 15.

SEC. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one-quarter section, or a less quantity, of unappropriated public lands, to be located in a body in conformity to the legal subdivisions of the public lands;

Owner of over 160 acres to acquire no rights.
1890, Aug. 30, ch. 837, par. 3, p. 791.

But no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory, shall acquire any right under the homestead law.

Adjoining farm entries.
R. S., sec. 2306.

And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

Persons in military or naval service, when and before whom to make affidavit.
Mar. 21, 1864, s. 4, v. 13, p. 35.

SEC. 2293. In case of any person desirous of availing himself of the benefits of this chapter; but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land-office * * *; and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona-fide improvement and settlement have been made, such person may make the affidavit required by law before the officer commanding in the branch of the service in which the party is engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law.

*Note 1.*—As to the court to which appeals should be taken in habeas corpus cases, see 1891, Mar. 3, ch. 517, secs. 5, 6 (1 Supp. R. S., 903), and 144 U. S., 47.

SEC. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

Homestead lands not to be subject to prior debts.
May 20, 1862, s. 4, v. 12, p. 392.

SEC. 2298. No person shall be permitted to acquire title to more than one quarter-section under the provisions of this chapter.

Limitation of amount entered for homestead.
May 20, 1862, s. 6, v. 12, p. 393.

That from and after the passage of this act no public lands of the United States, except those in the State of Missouri shall be subject to private entry.

Mar. 2, 1889.
25 Stat. L., 854.
No public lands except in Missouri subject hereafter to private entry. R. S., secs. 2353-3762. June 22, 1874, ch. 422 and note, p. 40; Mar. 3, 1891, ch. 561, s. 9, p. 943.

SEC. 2. That any person who has not heretofore perfected title to a tract of land of which he has made entry under the homestead law, may make a homestead entry of not exceeding one-quarter section of public land subject to such entry, such previous filing or entry to the contrary notwithstanding; but this right shall not apply to persons who perfect title to lands under the pre-emption or homestead laws already initiated;

Homestead entry may be made, notwithstanding former unperfected entry.
R. S., sec. 2298.
Mar. 3, 1891, ch. 561, s. 5, p. 942.

*Provided*, That all pre-emption settlers upon the public lands whose claims have been initiated prior to the passage of this act may change such entries to homestead entries and proceed to perfect their titles to their respective claims under the homestead law notwithstanding they may have heretofore had the benefit of such law, but such settlers who perfect title to such claims under the homestead law shall not thereafter be entitled to enter other lands under the pre-emption or homestead laws of the United States.

Pre-emption settlers already initiated may change to homestead entry.
R. S., sec. 2301.
Mar. 3, 1891, ch. 561, s. 6, p. 943.
See note 1.

That section three of the said Act of March second, eighteen hundred and eighty-nine, be amended by adding thereto the following provision:

Dec. 29, 1894.
28 Stat. L., 599.

That if any such settler has heretofore forfeited his or her entry for any of said reasons, such person shall be permitted to make entry of, not to exceed a quarter section on any public land subject to entry under the homestead law, and to perfect title to the same under the same conditions in every respect as if he had not made the former entry.

Public lands.
Settler may enter, if former entry unavoidably forfeited.
Mar. 2, 1889, ch. 381, s. 3 (1 Supp. R. S., 683).
See note 2.

SEC. 5. That any homestead settler who has heretofore entered less than one-quarter section of land may enter other and additional land lying contiguous to the original entry, which shall not, with the land first entered and occupied, exceed in the aggregate one hundred and sixty acres without proof of residence upon and cultivation of the additional entry; and if final proof of settlement and

Homestead settlers on less, may enter up to one quarter section without further proof.
R.S., secs. 2304-2309.
Mar. 3, 1891, s. 5, ch. 561, p. 942.

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*Note 1.*—The pre-emption law was repealed by act of March 3, 1891. (Chap. 561, sec. 4, p. 942.)

*Note 2.*—The act of July 1, 1879, settlers were protected from absence of one year in consequence of the destruction of crops by grasshoppers. Previous acts permitting settlers to be absent from their lands in specified years, on account of injury by the grasshoppers, are as follows: June 18, 1874, ch. 308, December 28, ch. 10, 18 Stat. L., 81, 294; May 20, 1876, ch. 102, June 19, ch. 134; March 3, 1877, ch, 127, 19 Stat. L., 54, 59, 405; June 1, 1878, ch. 148, and June 14, ch. 190, 20 Stat. L., 88, 113.

cultivation has been made for the original entry, when the additional entry is made, then the patent shall issue without further proof:

—only owners and occupants.

*Provided*, That this section shall not apply to or for the benefit of any person who at the date of making application for entry hereunder does not own and occupy the lands covered by his original entry:

—not permitted if original entry be void.

*And provided*, That if the original entry should fail for any reason, prior to patent or should appear to be illegal or fraudulent, the additional entry shall not be permitted, or if having been initiated shall be canceled.

Persons entitled to homesteads who have made proof, etc., for less, may enter quarter section, etc.
Mar. 3, 1891, ch. 561, s. 5, p. 942.

SEC. 6. That every person entitled, under the provisions of the homestead laws, to enter a homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the receiver's final receipt therefor, shall be entitled under said laws to enter as a personal right, and not assignable, by legal subdivisions of the public lands of the United States subject to homestead entry, so much additional land as added to the quantity previously so entered by him shall not exceed one hundred and sixty acres:

Patent not to issue without residence.

*Provided*, That in no case shall patent issue for the land covered by such additional entry until the person making such additional entry shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered and otherwise fully complied with such laws:

Soldiers' certificates not affected.
R.S., secs. 2304, 2309.

*Provided, also*, That this section shall not be construed as affecting any rights as to location of soldiers' certificates heretofore issued under section two thousand three hundred and six of the Revised Statutes.

What minors may have the privileges of this chapter.
Ibid.

SEC. 2300. No person who has served, or may hereafter serve, for a period not less than fourteen days in the Army or Navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this chapter on account of not having attained the age of twenty-one years.

Mar. 3, 1891.

26 Stat. L., 1095.

SEC. 6. That section twenty-three hundred and one of the Revised Statutes be amended so as to read as follows:

Homestead entry may be commuted after fourteen months' residence.
Substitute for R. S., sec. 2301.
Ibid., s. 8.

"SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section twenty-two hundred and eighty nine from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months."

Soldiers' and sailors' homestead.
June 8, 1872, s. 1, v. 17, p. 333.

SEC. 2304. Every private soldier and officer who has served in the Army of the United States during the recent rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, in-

cluding the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteen, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States, or in the Marine Corps, during the rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter-section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement.

Deduction of military and naval service from time, etc. Ibid.

SEC. 2305. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

Actual service in the Army or Navy equivalent to residence, etc. Ibid., s. 4.

SEC. 2308. Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been canceled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service.

Who may enter by agent. Ibid., s. 5, p. 334.

SEC. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law.

## IMPORTATIONS, ETC.

Sec.
1624. Importing in public vessels.
2791. Public vessels need not enter.

Title 15, chap. 10.

Importing in public vessels. July 30, 1846, s. 10, v. 9, p. 44. See sec. 2760, Revenue-Cutter Service.

SEC. 1624, Art. 12. No person connected with the Navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty.

Title 34, chap. 4.

Public vessels need not enter. Mar. 2, 1799, s. 31, v. 1, p. 651. See note 1.

SEC. 2791. It shall not be necessary for the master of any vessel of war, or of any vessel employed by any prince, or state, as a public packet for the conveyance of letters and dispatches, and not permitted by the laws of such prince or state to be employed in the transportation of merchandise, in the way of trade, to make report and entry.

## LIGHT-HOUSE BOARD AND LIGHTS AND BUOYS.

Sec.
4653. Organization of the Light-House Board.
4654. President of the Board.
4655. Chairman.
Act July 26, 1886. Light-house districts.
4671. Light-house inspectors.
4678. Color of buoys prescribed.
4679. Restriction on compensation of officers, etc.
4680. Officers, etc., not to be interested in contracts.
Act July 26, 1886. Jurisdiction over certain rivers.

Title 55.

Organization of the Light-House Board. Aug. 31, 1852, s. 8, v. 10, p. 119.

SEC. 4653. The President shall appoint two officers of the Navy, of high rank, two officers of the Corps of Engineers of the Army, and two civilians of high scientific attainments, whose services may be at the disposal of the President, together with an officer of the Navy and an officer of engineers of the Army, as secretaries, who shall constitute the Light-House Board.

President of the board. Ibid., s. 9.

SEC. 4654. The Secretary of the Treasury shall be ex-officio president of the Light-House Board.

Chairman. Ibid.

SEC. 4655. The Light-House Board shall elect, by ballot, one of their number as chairman of the board, who shall preside at their meetings, when the president is absent, and shall perform such acts as may be prescribed by the rules of the board.

July 26, 1886.

24 Stat. L., 148. Ligt-house districts may be sixteen. Substitute for R. S., sec. 4670. Persons over 45 permitted to serve in light-houses.

That section forty-six hundred and seventy of the Revised Statutes is hereby amended so as to read as follows:

"The Light-House Board shall arrange the ocean, gulf, lake, and river coasts of the United States into light-house districts, not exceeding sixteen in number.

"That any law or regulation prohibiting the employment in the light-houses of the United States of persons of more than forty-five years of age be and the same is hereby repealed."

Light-house districts. Ibid., s. 12.

SEC. 4671. An officer of the Army or Navy shall be assigned to each district as a light-house inspector, subject to the orders of the Light-House Board; and shall receive for such service the same pay and emoluments that he would be entitled to by law for the performance of duty in the regular line of his profession, and no other, except the legal allowance per mile, when traveling under orders connected with his duties.

*Note 1.*—The free list showing the articles which are admitted free of duty may be found in the act of July 24, 1897, and is too long to be inserted in this compilation. (See Stat. L., vol. 30, p. 151.)

SEC. 4678. All buoys along the coast, or in bays, harbors, sounds, or channels, shall be colored and numbered, so that passing up the coast or sound, or entering the bay, harbor, or channel, red buoys with even numbers shall be passed on the starboard hand, black buoys with uneven numbers on the port hand, and buoys with red and black stripes on either hand. Buoys in channel-ways shall be colored with alternate white and black perpendicular stripes.

Color of buoys prescribed. Sept. 28., 1850, s. 6, v. 9, p. 504.

SEC. 4679. No additional salary shall be allowed to any civil, military, or naval officer on account of his being employed on the Light-House Board, or being in any manner attached to the light-house service.

Restriction upon compensation of officers, etc. Aug. 31, 1852, s. 17, v. 10, p. 120.

SEC. 4680. No member of the Light-House Board, inspector, light-keeper, or other person in any manner connected with the light-house service, shall be interested, either directly or indirectly, in any contract for labor, materials, or supplies for the light-house service, or in any patent, plan, or mode of construction or illumination, or in any article of supply for the light-house service.

Officers, etc., not to be interested in contracts. Ibid.

June 23, 1874.

That the jurisdiction of the Light-House Board, created by the act entitled "An act making appropriations for light-houses, light-boats, buoys, and so forth, and providing for the erection and establishment of the same, and for other purposes," approved August thirty-first, eighteen hundred and fifty-two, is hereby extended over the Mississippi, Ohio, and Missouri Rivers, for the establishment of such beacon-lights, day-beacons, and buoys as may be necessary for the use of vessels navigating those streams; and for this purpose the said board is hereby required to divide the designated rivers into one or two additional light-house districts, to be in all respects similar to the already existing light-house districts; and is hereby authorized to lease the necessary ground for all such lights and beacons as are used to point out changeable channels, and which in consequence cannot be made permanent.

Jurisdiction of Light-House Board extended. 1852, ch. 112, s. 8, v. 10, p. 118.

Additional light-house districts. June 23, 1874, v. 18, p. 204.

## MERCHANT VESSELS AND SERVICE. YACHTS.

Sec.
4511. Shipping-articles.
4512. Rules for shipping-articles.
Act June 9, 1874. Vessels in coastwise trade, etc.
Act Feb. 18, 1895. Shipment of merchant seamen.
4513. Exceptions as to shipping-articles.
4514. Penalty for shipping without agreement.
4515. Penalty for knowingly shipping seamen without articles.
4516. Lost seamen may be replaced.
4517. Shipping seamen in foreign ports.
4518. Penalty for violating preceding section.
4538. Effects of deceased seamen.
4539. Proceedings in regard to effects.
4540. Penalty for neglect in regard to seamen's effects.
4541. Duties of consular officers in regard to deceased seamen's effects.
4548. Wages payable in gold.
4559. Appointment of inspectors by consul in foreign ports.
4560. Report of inspectors.
Act June 26, 1894. Discharge of seamen and payment of extra wages on account of unseaworthiness of vessel.
Sec.
4562. Payment of charges for inspection.
4563. Refusal to pay wages, charges, and damages; penalty.
4565. Examination of provisions.
4566. Forfeiture for false complaint.
4567. Permission to enter complaint.
4577. Return of seamen.
Act June 26, 1884. Destitute seamen to be transported to United States by masters of vessels at cost of United States. Penalty for refusal.
4579. Additional allowance for transportation of destitute seamen.
Act June 26, 1884. Discharge of seamen and payment of wages.
4581. Penalty for neglect to collect extra wages.
Act June 26, 1884. Extra wages upon discharge in case of sale.
Act June 26, 1884. Extra wages when voyage is prolonged or discharge is for injuries received.
4589. Protest upon impressment.
Act June 26, 1884. Reclamation and discharge of deserters.
5363. Abandonment of mariners.

### SEAMEN.

Title 53, chap. 2.

Shipping articles.

June 7, 1872, s. 12, v. 17, p. 264; Jan. 15, 1873, v. 17, p. 410.

19 A. G. Op., p. 182.

SEC. 4511. The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, or of any vessel of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned; and every such agreement shall be, as near as may be, in the form given in the table marked A, in the schedule annexed to this Title, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars:

First. The nature, and, as far as practicable, the duration of the intended voyage or engagement, and the port or country at which the voyage is to terminate.

Second. The number and description of the crew, specifying their respective employments.

Third. The time at which each seaman is to be on board, to begin work.

Fourth. The capacity in which each seaman is to serve.

Fifth. The amount of wages which each seaman is to receive.

Rules for shipping articles.

June 7, 1872, s. 13, v. 17, p. 265.

SEC. 4512. The following rules shall be observed with respect to agreements:

First. Every agreement, except such as are otherwise specially provided for, shall be signed by each seaman in the presence of a shipping commissioner.

Second. When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping-commissioner, and the other part shall contain a special place or form for the description and signatures of persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

Third. Every agreement entered into before a shipping-commissioner shall be acknowledged and certified under the hand and official seal of such commissioner. The certificate of acknowledgment shall be indorsed on or annexed to the agreement; and shall be in the following form:

"State of ———, County of ———:

"On this ——— day of ———, personally appeared before me, a shipping-commissioner in and for the said county, A. B., C. D., and E. F., severally known to me to be the same persons who executed the foregoing instrument, who each for himself acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober and not in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned."

June 9, 1874.

18 Stat. L., 64. Vessels in coastwise trade, with certain exceptions, exempt from provisions of shipping commissioners' act. R. S., secs. 2174; 4501–4520, 4523–4529, 4531–4536, 4538–4545, 4549–4555, 4565–4572, 4592–4597, 4599, 4600, 4602–4607, 609, 4610, 4612. 4 2 Lowell, 381. See note 1.

That none of the provisions of an act entitled "An act to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen" shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage.

Feb. 18, 1895.

28 Stat. L., 667. Shipment of merchant seamen. Substitute for Aug. 19, 1890, ch. 801 (1 Supp. R. S., 780). Shipping crews for vessels in coastwise trade, etc.

That chapter eight hundred and one of the Public Laws of the Fifty-first Congress, entitled "An Act to amend the Act relative to shipping commissioners, approved August nineteenth, eighteen hundred and ninety, is hereby amended so as to read as follows:

"When a crew is shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada,

*Note 1.*—The act of June 7, 1872, ch. 322 (17 Stat. L., 262), is incorporated into the Revised Statutes in the sections noted in the margin.

These provisions relate mainly to the shipment and discharge of crews by shipping commissioners. Such shipment and discharge are made by this act inapplicable to the crews of vessels engaged in the coastwise trade, but June 19, 1886, ch. 421, s. 2 (1 Supp. R. S., 493), makes the shipment and discharge of such crews permissible, and Aug. 19, 1890, ch. 801 (1 Supp. R. S., 780), makes it compulsory.

For these reasons the act in the text appeared to the editor to be superseded by those of 1886 and 1890, and was omitted from the second edition of the first volume of this work.

There seems to be some question, however, whether the act in the text is not still so far in force as to prevent the operation of R. S., sec. 4536, upon crews of vessels in the coastwise trade. The editor followed the opinion of Judge Benedict in McCarty v. Steam Propeller City of New Bedford (4 Fed. Rep., 821), that the provisions of R. S., sec. 4536, are unaffected by the act of 1874, and therefore omitted the act.

It seems, however, that there is a difference of opinion on that point, and the act is therefore here restored.

June 19, 1886, ch. 421, s. 1 and note, s. 2 (1 Supp. R. S., 493).

or New Foundland, or the West Indies, or Mexico, as authorized by section two of an Act approved June nineteenth, eighteen hundred and eighty-six, entitled "An Act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," an agreement shall be made with each seaman engaged as one of such crew in the same manner as is provided by Sections four thousand five hundred and eleven and four thousand five hundred and twelve of the Revised Statutes,

R. S., secs. 4511, 4512.

Omissions. R. S., 4511, pars. 6, 7, 8.

not however including the sixth, seventh and eighth items of Section four thousand five hundred and eleven;

Posting agreement. R. S., sec. 4519.

and such agreement shall be posted as provided in Section four thousand five hundred and nineteen.

Wages, etc. R. S. secs., 4526, 4530, 4535, 4536, 4542, 4547, 4549, 4554.

and such seamen shall be discharged and receive their wages as provided by the first clause of Section four thousand five hundred and twenty-nine and also by Sections four thousand five hundred and twenty-six, four thousand five hundred and twenty-seven, four thousand five hundred and twenty-eight, four thousand five hundred and thirty, four thousand five hundred and thirty-five, four thousand five hundred and thirty-six, four thousand five hundred and forty-two, four thousand five hundred and forty-three, four thousand five hundred and forty-four, four thousand five hundred and forty-five, four thousand five hundred and forty-six, four thousand five hundred and forty-seven, four thousand five hundred and forty-nine, four thousand five hundred and fifty, four thousand five hundred and fifty-one, four thousand five hundred and fifty-two, four thousand five hundred and fifty-three and four thousand five hundred and fifty-four of the Revised Statutes;

Shipment, how regarded.

but in all other respects such shipment of seamen and such shipping ageement shall be regarded as if both shipment and agreement had been entered into between the master of a vessel and a seaman without going before a shipping commissioner:

Clothing exempt from attachment.

*Provided*, That the clothing of any seaman shall be exempt from attachment, and that any person who shall detain such clothing when demanded by the owner shall be liable to a penalty of not exceeding one hundred dollars."

Exception as to shipping articles. Idem, s. 12, and Feb. 27, 1877, v. 19, p. 252.

SEC. 4513. The section forty-five hundred and eleven shall not apply to masters of vessels where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage, nor to masters of coastwise nor to masters of lake-going vessels that touch at foreign ports; but seamen may, by agreement, serve on board such vessels a definite time, or, on the return of any vessel to a port in the United States, may reship and sail in the same vessel on another voyage, without the payment of additional fees to the shipping-commissioner, by either the seaman or the master.

Penalty for shipping without agreement. June 7, 1872, s. 14, v. 17, p. 265.

SEC. 4514. If any person shall be carried to sea, as one of the crew on board of any vessel making a voyage as hereinbefore specified, without entering into an agreement with

the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than two hundred dollars. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea.

Penalty for knowingly shipping seamen without articles. Ibid. U. S. v. Steamship City of Mexico, 11 Blatch., 489.

SEC. 4515. If any master, mate, or other officer of a vessel knowingly receives, or accepts, to be entered on board of any merchant-vessel, any seaman who has been engaged or supplied contrary to the provisions of this Title, the vessel on board of which such seaman shall be found shall, for every such seaman, be liable to a penalty of not more than two hundred dollars.

Lost seamen may be replaced. June 7, 1872, s. 14, v. 17, p. 265.

SEC. 4516. In case of desertion, or of casualty resulting in the loss of one or more seamen, the master may ship a number equal to the number of whose services he has been deprived by desertion or casualty, and report the same to the United States consul at the first port at which he shall arrive, without incurring the penalty prescribed by the two preceding sections.

Shipping seamen in foreign ports. Ibid., s. 15.

SEC. 4517. Every master of a merchant-vessel who engages any seaman at a place out of the United States, in which there is a consular officer or commercial agent, shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage seamen in his presence; and the rules governing the engagement of seamen before a shipping-commissioner in the United States, shall apply to such engagements made before a consular officer or commercial agent; and upon every such engagement the consular officer or commercial agent shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise duly made.

Penalty for violating preceding section. Ibid.

SEC. 4518. Every master who engages any seaman in any place in which there is a consular officer or commercial agent, otherwise than as required by the preceding section, shall incur a penalty of not more than one hundred dollars, for which penalty the vessel shall be held liable.

Title 53, chap. 3.

Effects of deceased seamen. June 7, 1872, s. 43, v. 17, p. 271.

SEC. 4538. Whenever any seaman or apprentice belonging to or sent home on any merchant-vessel, whether a foreign-going or domestic vessel, employed on a voyage which is to terminate in the United States, dies during such voyage, the master shall take charge of all moneys, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of such clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log book, and cause it to be attested by the mate and one of the crew, containing the following particulars:

First. A statement of the amount of money so left by the deceased.

Second. In case of a sale, a description of each article sold, and the sum received for each.

Third. A statement of the sum due to deceased as wages, and the total amount of deductions, if any, to be made therefrom.

Proceedings in regard to effects of deceased seamen. Ibid., s. 44.

SEC. 4539. In cases embraced by the preceding section, the following rules shall be observed:

First. If the vessel proceeds at once to any port in the United States, the master shall, within forty-eight hours after his arrival, deliver any such effects remaining unsold, and pay any money which he has taken charge of, or received from such sale, and the balance of wages due to the deceased, to the shipping-commissioner at the port of destination in the United States.

Second. If the vessel touches and remains at some foreign port before coming to any port in the United States, the master shall report the case to the United States consular officer there, and shall give to such officer any information he requires as to the destination of the vessel and probable length of the voyage; and such officer may, if he considers it expedient so to do, require the effects, money, and wages to be delivered and paid to him, and shall, upon such delivery and payment, give to the master a receipt; and the master shall within forty-eight hours after his arrival at his port of destination in the United States produce the same to the shipping-commissioner there. Such consular officer shall, in any such case, indorse and certify upon the agreement with the crew the particulars with respect to such delivery and payment.

Third. If the consular officer does not require such payment and delivery to be made to him, the master shall take charge of the effects, money, and wages, and shall, within forty-eight hours after his arrival at his port of destination in the United States, deliver and pay the same to the shipping-commissioner there.

Fourth. The master shall, in all cases in which any seaman or apprentice dies during the voyage or engagement, give to such officer or shipping-commissioner an account, in such form as they may respectively require, of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified by an entry in the official log-book, if there be any; and by such other vouchers, if any, as may be reasonably required by the officer or shipping-commissioner to whom the account is rendered.

Fifth. Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United States, the shipping-commissioner shall grant to the master a certificate to that effect. No officer of customs shall clear any foreign-going vessel without the production of such certificate.

Penalty for neglect in regard to seaman's effects. Ibid., s. 45.

SEC. 4540. Whenever any master fails to take such charge of the money or other effects of a seaman or apprentice during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make

such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as is above directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the circuit court in whose jurisdiction such port of destination is situate, and shall pay and deliver the same accordingly; and he shall, in addition, for every such offense, be liable to a penalty of not more than treble the value of the money or effects, or, if such value is not ascertained, not more than two hundred dollars; and if any such money, wages, or effects are not duly paid, delivered, and accounted for by the master, the owner of the vessel shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the money and value, be liable to the same penalty which is incurred by the master for a like offense; and all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the courts and by the modes of proceeding by which seamen are enabled to recover wages due to them.

Duties of consular officers in regard to deceased seaman's effects.
Ibid., s. 46.
See note 2.

SEC. 4541. Whenever any such seaman or apprentice dies at any place out of the United States, leaving any money or effects not on board of his vessel, the consular officer of the United States at or nearest the place shall claim and take charge of such money and effects, and shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions of this Title, and shall quarterly remit to the district judge for the district embracing the port from which such vessel sailed, or the port where the voyage terminates, all moneys belonging to or arising from the sale of the effects or paid as the wages of any deceased seamen or apprentices which have come to his hands; and shall render such accounts thereof as the district judge requires.

Wages payable in gold.
Mar. 3, 1873, v. 17, p. 602.

SEC. 4548. Moneys paid under the laws of the United States, by direction of consular officers or agents, at any foreign port or place, as wages, extra or otherwise, due American seamen, shall be paid in gold or its equivalent, without any deduction whatever, any contract to the contrary notwithstanding.

Title 53, chap. 5.

Appointment of inspectors by consul in foreign port.
July 20, 1840, v. 5, p. 396; July 29, 1850, s. 6, v. 9, p. 441.

SEC. 4559. Upon a complaint in writing, signed by the first, or the second and third officers and a majority of the crew, of any vessel while in a foreign port, that such vessel is in an unsuitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been, during the voyage, sufficient and wholesome, thereupon, in any of these or like cases, the consul or a commercial agent who may discharge any duties of a

*Note 2.*—Unclaimed wages and effects, after six years, go to the fund for the relief of disabled and destitute seamen. (Sec. 4545.)

consul, shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall, in their report, state what defects and deficiencies, if any, they find to be well founded, as well as what, in their judgment, ought to be done to put the vessel in order for the continuance of her voyage.

Report of inspectors. July 20, 1840, v. 5, p. 396.

SEC. 4560. The inspectors appointed by any consul or commercial agent, in pursuance of the preceding section, shall have full power to examine the vessel and whatever is aboard of her, so far as is pertinent to their inquiry, and also to hear and receive any other proofs which the ends of justice may require; and if, upon a view of the whole proceedings, the consul or other commercial agent is satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval; or if he dissents, he shall certify his reasons for dissenting.

June 26, 1884.

SEC. 4. That section forty-five hundred and sixty-one of the Revised Statutes be amended so as to read as follows:

Discharge of crew and payment of extra wages on account of unseaworthiness of vessel. Substitute for R. S., sec. 4561.

"Sec. 4561. The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consular officer approves of such finding, he shall discharge such of the crew as request it, and shall require the payment by the master of one month's wages for each seaman over and above the wages then due.

But if, in the opinion of the inspectors, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall, in a reasonable time, remove or remedy the causes of complaint, then the crew shall remain and discharge their duty."

Payment of charges for inspection. Ibid.

SEC. 4562. The master shall pay all such reasonable charges for inspection under such complaint as shall be officially certified to him under the hand of the consul or commercial agent; but in case the inspectors report that the complaint is without any good or sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul or commercial agent directing the inquiry may officially certify.

Refusal to pay wages and charges; damages; penalty. Ibid., p. 397.

SEC. 4563. Every master who refuses to pay such wages and charges shall be liable to each person injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense.

Examination of provisions. June 7, 1872, s. 36, v. 17, p. 269.

SEC. 4565. Any three or more of the crew of any merchant-vessel of the United States bound from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward, and bound from a port on the Atlantic

to a port on the Pacific, or vice versa, may complain to any officer in command of any of the vessels of the United States Navy, or consular officer of the United States, or shipping-commissioner or chief officer of the customs, that the provisions or water for the use of the crew are, at any time, of bad quality, unfit for use, or deficient in quantity. Such officer shall thereupon examine the provisions or water, or cause them to be examined; and if, on examination, such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall certify the same in writing to the master of the ship. If such master does not thereupon provide other proper provisions or water, where the same can be had, in lieu of any so certified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so certified to be insufficient in quantity, or uses any provisions or water which have been so certified as aforesaid to be of bad quality and unfit for use, he shall, in every such case, be liable to a penalty of not more than one hundred dollars; and upon every such examination the officers making or directing the same shall enter a statement of the result of the examination in the log-book, and shall send a report thereof to the district judge for the judicial district embracing the port to which such vessel is bound; and such report shall be received in evidence in any legal proceedings.

Forfeiture for false complaint. Ibid., s. 37.

SEC. 4566. If the officer to whom any such complaint, in regard to the provisions or the water, is made, certifies in such statement that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the master or owner, out of his wages, a sum not exceeding one week's wages.

Permission to enter complaint. Ibid., s. 38.

SEC. 4567. If any seaman, while on board any vessel, shall state to the master that they desire to make complaint, in accordance with the two preceding sections, in regard to the provisions or the water, to a competent officer, against the master, the master shall, if the vessel is then at a place where there is any such officer, so soon as the service of the vessel will permit, and if the vessel is not then at such a place, so soon after her first arrival at such place as the service of the vessel will permit, allow such seamen, or any of them, to go ashore, or shall send them ashore, in proper custody, so that they may be enabled to make such complaint; and shall, in default, be liable to a penalty of not more than one hundred dollars.

Return of seamen. Feb. 28, 1803, s. 4, v. 2, p. 204.

SEC. 4577. It shall be the duty of the consuls, vice-consuls, commercial agents, and vice-commercial agents, from time to time, to provide for the seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port of the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen shall, if able, be bound to do duty on board the vessels in which they may be transported, according to their several abilities.

June 26, 1884.

SEC. 9. That section forty-five hundred and seventy-eight of the Revised Statutes be amended so as to read as follows:

Disposal of extra wages.

Destitute seamen to be transported to United States by masters of vessels, at cost of United States.

Substitute for R. S., sec. 4578.

1886, June 19, ch. 421, s. 18, p. 497.

"SEC. 4578. All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding ten dollars for each person for voyages of not more than thirty days, and not exceeding twenty dollars for each person for longer voyages, as may be agreed between the master and the consular officer; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection.

Additional pay by United States when seamen unable to do duty.

If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the First Comptroller of the Treasury shall deem proper.

Refusal by master to receive destitute seamen.

Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of one hundred dollars for each seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty.

Limit of obligation.

1886, June 19, ch. 421, s. 18, p. 497.

No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage."

Payments in advance or for shipment of seamen, prohibited.

22 Fed. Rep., 734; 27 Fed. Rep., 765; 24 C. Cls. R., 160.

"SEC. 10. That it shall be, and is hereby, made unlawful in any case to pay any seamen wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.

18 Opins., 253.

Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than four times the amount of the wages so advanced or remuneration so paid, and may be also imprisoned for a period not exceeding six months, at the discretion of the court.

The payment of such advanced wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages:

Exemption of whaling vessels.

*Provided*, That this section shall not apply to whaling-vessels:

*And provided further*, * * * [*Words omitted, superseded*, 1886, *June* 19, *ch.* 421, *s.* 3, *p.* 493.]

Penalty for false claim of relationship.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall,

for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels as to vessels of the United States; * * * [*Words omitted, superseded*, 1886, *June* 19, *ch.* 421, *s.* 3, *p.* 493.]

Section applies to foreign vessels.

SEC. 4579. Whenever distressed seamen of the United States are transported from foreign ports where there is no consular officer of the United States, to ports of the United States, there shall be allowed to the master or owner of each vessel, in which they are transported, such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the First Comptroller of the Treasury.

Additional allowance for transportation of destitute seamen. Feb. 28, 1811, v. 2, p. 651.

SEC. 2. That section forty-five hundred and eighty of the Revised Statutes be amended so as to read as follows:

June 26, 1884.

"SEC. 4580. Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman;

Discharge of seamen and payment of wages. Substitute for R. S., sec. 4580.

But no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in this act."

SEC. 7. That section forty-five hundred and eighty-one of the Revised Statutes be amended so as to read as follows:

June 26, 1884.

"SEC. 4581. If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States to the full amount thereof. * * * [*Words omitted superseded*, 1888, *April* 4, *ch.* 61, *s.* 3, *p.* 584.]

Penalty on consuls for neglect to collect extra wages. Substitute for R. S., sec. 4581.

"SEC. 5. That section forty-five hundred and eighty-two of the Revised Statutes be amended so as to read as follows:

June 26, 1884.

"SEC. 4582. Whenever a vessel of the United States is sold in a foreign country, and her company discharged, it shall be the duty of the master to produce to the consular officer the certified list of his ship's company, and also the shipping articles, and to pay to said consular officer for every seaman so discharged one month's wages over and above the wages which may then be due to such seaman;

Extra wages upon discharge in case of sale. Substitute for R. S., sec. 4582.

But in case the master of the vessel so sold shall, with the assent of said seaman, provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, then no payment of extra wages shall be required."

June 26, 1884.

Extra wages when voyage is unnecessarily prolonged or discharge is for injuries received.

Substitute for R. S., sec. 4583.

SEC. 3. That section forty-five hundred and eighty-three of the Revised Statutes be amended so as to read as follows:

"SEC. 4583. Whenever on the discharge of a seaman in a foreign country, on his complaint that the voyage is continued contrary to agreement, the consular officer shall be satisfied that such voyage has been designedly and unnecessarily prolonged in violation of the articles of shipment, or whenever a seaman is discharged by a consular officer in consequence of any hurt or injury received in the service of the vessel, such consular officer shall require the payment by the master of one month's wages for such seaman over and above the wages due at the time of discharge."

Protest upon impressment.

May 28, 1796, s. 4, v. 1, p. 477.

SEC. 4589. The master of every vessel of the United States, any of the crew whereof shall have been impressed or detained by any foreign power, shall, at the first port at which such vessel arrives, if such impressment or detention happened on the high seas, or if the same happened within any foreign port, then in the port in which the same happened, immediately make a protest, stating the manner of such impressment or detention, by whom made, together with the name and place of residence of the person impressed or detained; distinguishing also whether he was an American citizen; and, if not, to what nation he belonged. Such master shall also transmit, by post or otherwise, every such protest made in a foreign country, to the nearest consul or agent, or to the minister of the United States resident in such country, if any such there be; preserving a duplicate of such protest, to be by him sent immediately after his arrival within the United States to the Secretary of State, together with information to whom the original protest was transmitted. In case such protest shall be made within the United States, or in any foreign country, in which no consul, agent, or minister of the United States resides, the same shall, as soon thereafter as practicable, be transmitted by such master, by post or otherwise, to the Secretary of State.

June 26, 1884.

Reclamation and discharge of deserters by consular officers.

Substitute for R. S., sec. 4600.

SEC. 6. That section forty-six hundred of the Revised Statutes be amended so as to read as follows:

"SEC. 4600. It shall be the duty of consular officers to reclaim deserters and discountenance insubordination by every means within their power, and where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner.

In all cases where deserters are apprehended the consular officer shall inquire into the facts; and if he is satisfied that the desertion was caused by unusual or cruel treatment, he shall discharge the seaman, and require the master of the vessel from which such seaman is discharged to pay one month's wages over and above the wages then due; and the officer discharging such seaman shall enter upon the crew-list and shipping articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and the facts as to his discharge or re-engagement, as the case may be, and subscribe his name thereto officially."

SEC. 5363. Every master or commander of any vessel belonging, in whole or part, to any citizen of the United States, who, during his being abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than six months.

Title 70, chap. 3.

Forcible abandonment of officer or mariner in foreign port.

Mar. 3, 1825, s. 10, v. 4, p. 117.

See note 1.

## VESSELS.


Sec.
4131. What are vessels of the United States. By whom may be commanded.
4132. What vessels are entitled to register.
4133. Vessels owned by nonresident citizens.
4134. Vessels owned by nonresident naturalized citizens.
4135. American vessel taking foreign flag.
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4307. Penalty for departing without passport.
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4573. List of crew to be delivered to collector.
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4575. Rules as to crew list.
5358. Plundering wrecked vessels, etc.
5364. Conspiracy to cast away vessel.
5365. Act Aug. 6, 1894. Owner destroying vessel at sea.
5366. Other person destroying vessel at sea.
5367. Attempt to destroy vessel at sea.
5423. Penalty for making false passports.


SEC. 4131. Vessels registered pursuant to law, and no others, except such as shall be duly qualified, according to law, for carrying on the coasting trade and fisheries, or one of them, shall be deemed vessels of the United States, and entitled to the benefits and privileges appertaining to such vessels; but they shall not enjoy the same longer than they shall continue to be wholly owned by citizens and to be commanded by a citizen of the United States.

Title 48, chap. 1.

What are vessels of the United States.

By whom may be commanded.

Dec. 31, 1792, s. 1, v. 1, p. 287.

See note 2.

That the last clause of section forty-one hundred and thirty-one of the Revised Statutes be amended so as to read as follows:

June 26, 1884.

23 Stat. L., 53.

"All the officers of vessels of the United States shall be citizens of the United States, except that in cases where, on a foreign voyage, or on a voyage from an Atlantic to a

Officers of vessels of United States to be citizens, except, etc.

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*Note 1.*—The consular and diplomatic act passed July 1, 1882, appropriates $60,000 for the relief of American seamen in foreign countries.

*Note 2.*—An act approved Apr. 17, 1874, chap. 107, v. 18, p. 30, provides that any alien, who in the manner provided for by law, has declared his intention of becoming a citizen of the United States, and who may have been a permanent resident of the United States for at least six months immediately previous to the granting of such license, may be licensed, as if already naturalized, as an engineer or pilot upon any steam vessel subject to inspection under the provisions of the act of Feb. 28, 1871, v. 16, p. 440.

See act of Apr. 17, 1874, and act of Apr. 5, 1882, title, "Pilots and pilotage."

An act approved Apr. 18, 1874, chap. 110, v. 18, p. 31, exempts canal boats or boats employed on the internal waters or canals of any State, excepting such as are provided with sails or propelling machinery of their own adapted to lake or coastwise navigation and such as are employed in trade with the Canadas, from the provisions of the act of Feb. 18, 1793, and from the payment of all customs and other fees under any act of Congress.

R. S., sec. 4131. 1874, Apr. 17, ch. 107, p. 8.

Pacific port of the United States, any such vessel is for any reason deprived of the services of an officer below the grade of master, his place, or a vacancy caused by the promotion of another officer to such place, may be supplied by a person not a citizen of the United States until the first return of such vessel to its home port; and such vessel shall not be liable to any penalty or penal tax for such employment of an alien officer."

What vessels are entitled to register. Idem, s. 2, p. 288.

SEC. 4132. Vessels built within the United States, and belonging wholly to citizens thereof, and vessels which may be captured in war by citizens of the United States, and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States, being wholly owned by citizens, and no others, may be registered as directed in this Title.

Vessels owned by nonresident citizens. Ibid.

SEC. 4133. No vessel shall be entitled to be registered, or, if registered, to the benefits of registry, if owned in whole or in part by any citizen of the United States who usually resides in a foreign country, during the continuance of such residence, unless such citizen be a consul of the United States, or an agent for and a partner in some house of trade or copartnership, consisting of citizens of the United States actually carrying on trade within the United States.

May 10, 1892.

27 Stat. L., 27. Steamships. Registers granted to certain foreign-built. R. S., secs. 4132, 4133. Tonnage and speed.

That the Secretary of the Treasury is hereby authorized and directed to grant registers, as vessels of the United States, to such foreign-built steamships now engaged in freight and passenger business, and sailing in an established line from a port in the United States, as are of a tonnage of not less than eight thousand tons, and capable of a speed of not less than twenty knots per hour, according to the existing method of Government test for speed, of which not less than ninety per centum of the shares of the capital of the foreign corporation or association owning the same was owned January first, eighteen hundred and ninety, and has continued to be owned until the passage of this act by citizens of the United States, including as such citizens corporations created under the laws of any of the States thereof, upon the American owners of such majority interest obtaining a full and complete transfer and title to such steamships from the foreign corporations owning the same:

Ownership. American owners to obtain title.

Owners to build an equal tonnage of ships in American shipyards.

*Provided*, That such American owners shall, subsequent to the date of this law, have built, or have contracted to build, in American shipyards, steamships of an aggregate tonnage of not less in amount than that of the steamships so admitted to registry.

Minimum tonnage.

Each steamship so built or contracted for to be of a tonnage of not less than seven thousand tons.

Steamships. Record of transfer. R. S., sec. 4155.

SEC. 2. That the Secretary of the Treasury, on being satisfied that such steamships so acquired by American citizens, or by such corporation or corporations as above set forth, are such as come within the provisions of this act, and that the American owners of such steamships, for which an American registry is to be granted under the provisions hereof, have built or contracted to build in American ship-

yards steamships of an aggregate tonnage as set forth in the first section hereof, shall direct the bills of sale or transfer of the foreign-built steamships so acquired to be recorded in the office of the collector of customs of the proper collection district, and cause such steamships to be registered as vessels of the United States by said collector.

Vessels to enjoy all privileges but coastwise trade. R.S., sec. 4131.

After which, each of such vessels shall be entitled to all the rights and privileges of a vessel of the United States, except that it shall not be employed in the coastwise trade of the United States.

No additional inspection.

SEC. 3. That no further or other inspection shall be required for the said steamship or steamships than is now required for foreign steamships carrying passengers under the existing laws of the United States, and that a special certificate of inspection may be issued for each steamship registered under this act;

Measurement, etc.

and that before issuing the registry to any such steamship as a vessel of the United States the collector of customs of the proper collection district shall cause such steamship to be measured and described in accordance with the laws of the United States, which measurement and description shall be recited in the certificate of registry to be issued under this act.

Payment when taken as cruisers. 1891, Mar. 3, ch. 519, s. 9 (1 Supp. R. S., 907).

SEC. 4. That any steamships so registered under the provisions of this act may be taken and used by the United States as cruisers or transports upon payment to the owners of the fair actual value of the same at the time of the taking, and if there shall be a disagreement as to the fair actual value at the time of taking between the United States and the owners, then the same shall be determined by two impartial appraisers, one to be appointed by each of said parties, who, in case of disagreement, shall select a third, the award of any two of the three so chosen to be final and conclusive.

Vessels owned by nonresident naturalized citizens. Mar. 27, 1804, s. 1, v. 2, p. 296.

SEC. 4134. No vessel shall be entitled to be registered as a vessel of the United States, or, if registered, to the benefits of registry, if owned in whole or in part by any person naturalized in the United States, and residing for more than one year in the country from which he originated, or for more than two years in any foreign country, unless such person be a consul or other public agent of the United States. Nothing contained in this section shall be construed to prevent the registering anew of any vessel before registered, in case of a sale thereof in good faith to any citizen resident in the United States; but satisfactory proof of the citizenship of the person on whose account a vessel may be purchased shall be exhibited to the collector, before a new register shall be granted for such vessel.

American vessel taking foreign flag. Feb. 10, 1866, ch. 8, v. 14, p. 3.

SEC. 4135. No vessel which has been recorded or registered as an American vessel of the United States, pursuant to law, and which was licensed or otherwise authorized to sail under a foreign flag, and to have the protection of any foreign government during the existence of the rebellion, shall be deemed or registered as a vessel of the United States, or shall have the rights and privileges of vessels of

the United States, except under provisions of law especially authorizing such registry.

Wrecked vessels.
Dec. 23, 1852, ch. 4, v. 10, p. 149; July 23, 1866, ch. 213, v. 14, p. 212.

SEC. 4136. The Secretary of the Treasury may issue a register or enrollment for any vessel built in a foreign country, whenever such vessel shall be wrecked in the United States, and shall be purchased and repaired by a citizen of the United States, if it shall be proved to the satisfaction of the Secretary that the repairs put upon such vessel are equal to three-fourths of the cost of the vessel when so repaired.

Jan. 16, 1885.
28 Stat. L., 624.
Substitute for R. S., sec. 4146.

SEC. 2. That section forty-one hundred and forty-six of the Revised Statutes is hereby amended so as to read:

Certificate of registry to be given up on loss or destruction of vessel.

"SEC. 4146. A certificate of registry shall be solely used for the vessel for which it is granted, and shall not be sold, lent, or otherwise disposed of, to any person whomsoever; and in case the vessel so registered shall be lost, or taken by an enemy, burned, or broken up, or shall be otherwise prevented from returning to the port to which she may belong, the certificate, if preserved, shall be delivered up within eight days after the arrival of the master or person having the charge or command of such vessel within any district of the United States, to the collector of such district;

—or on purchase by foreigner.

and if any foreigner, or any person for the use and benefit of such foreigner, shall purchase or otherwise become entitled to the whole, or any part or share of, or interest in such vessel, the same being within a district of the United States, the certificate shall, within seven days after such purchase, change, or tranfer of property, be delivered up to the collector of the district; and if any such purchase, change, or transfer of property shall happen when such vessel shall be at any foreign port or place, or at sea, then the master or person having the charge or command thereof shall, within eight days after his arrival within any district of the United States, deliver up the certificate to the collector of such district.

Penalty for not delivering certificate.

Any master or owner violating the provisions of this section shall be liable to a penalty of not exceeding five hundred dollars, and the certificate of registry shall be thenceforth void.

Failure to report sale to foreigners.
Dec. 31, 1792, s. 16, v. 1, p. 295.

SEC. 4172. If any vessel registered as a vessel of the United States shall be sold or transferred, in whole or in part, by way of trust, confidence, or otherwise, to a subject or citizen of any foreign prince or state, and such sale or transfer shall not be made known, as hereinbefore directed, such vessel, together with her tackle, apparel, and furniture, shall be forfeited. If such vessel, however, be so owned in part only, and it is made to appear to the jury before whom the trial for such forfeiture is had, that any other owner of such vessel, being a citizen of the United States, was wholly ignorant of the sale or transferto or ownership of such foreign subject or citizen, the share or interest of such citizen of the United States shall not be subject to such forfeiture, and the residue only shall be so forfeited.

Numbers for vessels. July 28, 1866, s. 13, v. 14, p. 331.

SEC. 4177. The Secretary of the Treasury shall have power, under such regulations as he shall prescribe, to establish and provide a system of numbering vessels so registered, enrolled, and licensed; and each vessel so numbered shall have her number deeply carved or otherwise permanently marked on her main beam; and if at any time she shall cease to be so marked, "Such vessel shall be liable to a fine of thirty dollars on every arrival in a port of the United States, if she have not her proper official number legally carved or permanently marked."

Feb. 21, 1891. 26 Stat. L., 765.

That section forty-one hundred and seventy-eight, of the Revised Statutes be, and the same is hereby, amended to read entire as follows:

Vessels' names, draft, and home port to be marked at bow and stern. Substitute for R. S., 4178.

"SEC. 4178. The name of every documented vessel of the United States shall be marked upon each bow and upon the stern, and the home port shall also be marked upon the stern. These names shall be painted, or carved and gilded, in Roman letters in a light color on a dark ground, or in a dark color on a light ground, and to be distinctly visible. The smallest letters used shall not be less in size than four inches.

Penalty.

If any vessels of the United States shall be found without these names being so marked the owner or owners shall be liable to a penalty of ten dollars for each name omitted:

Limit of time.

*Provided, however*, That the names on each bow may be marked within the year eighteen hundred and ninety-one."

Change of name of registered vessel. May 5, 1864, s. 2, v. 13, p. 64.

SEC. 4179. No master, owner, or agent of any vessel of the United States shall in any way change the name of such vessel, or by any device, advertisement, or contrivance to deceive or attempt to deceive the public, or any officer or agent of the United States, or of any State, or any corporation or agent thereof, or any person or persons, as to the true name or character of such vessel, on pain of the forfeiture of such vessel.

Penalty for fraudulent registry. July 18, 1866, s. 24, v. 14, p. 184.

SEC. 4189. Whenever any certificate of registry, enrollment, or license, or other record or document granted in lieu thereof, to any vessel, is knowingly and fraudulently obtained or used for any vessel not entitled to the benefit thereof, such vessel, with her tackle, apparel, and furniture, shall be liable to forfeiture.

Sea letters, to what vessels issued. Mar. 26, 1810, v. 2, p. 568.

SEC. 4190. No sea-letter or other document certifying or proving any vessel to be the property of a citizen of the United States shall be issued, except to vessels duly registered, or enrolled and licensed as vessels of the United States, or to vessels which shall be wholly owned by citizens of the United States, and furnished with or entitled to sea-letters or other custom-house documents.

Making or using forged sea letter, etc. Mar. 2, 1803, s. 1, v. 2, p. 209.

SEC. 4191. Every person who knowingly makes, utters, or publishes any false sea letter, Mediterranean passport, or certificate of registry, or who knowingly avails himself of any such Mediterranean passport, sea-letter, or certificate of registry, shall be liable to a penalty of not more than five thousand dollars, and, if an officer of the United States, shall thenceforth be incapable of holding any office of trust or profit under the authority of the United States.

Title 48, chap. 2.

Conveyance of bullion, coin, etc., for the United States.
July 4, 1864, s. 10, v. 13, p. 392.

SEC. 4204. All vessels belonging to citizens of the United States, and bound from any port in the United States to any other port therein, or to any foreign port, or from any foreign port to any port in the United States, shall, before clearance, receive on board all such bullion, coin, United States notes and bonds and other securities, as the Government of the United States or any department thereof, or any minister, consul, vice-consul, or commercial or other agent of the United States abroad, shall offer, and shall securely convey and promptly deliver the same to the proper authorities or consignees, on arriving at the port of destination; and shall receive for such service such reasonable compensation as may be allowed to other carriers in the ordinary transactions of business.

Copy of rates of consular fees to be annexed to clearance.
Aug. 18, 1856, s. 16, v. 11, p. 57.

SEC. 4207. Whenever any clearance is granted to any vessel of the United States, duly registered as such, and bound on any foreign voyage, the collector of the district shall annex thereto, in every case, a copy of the rates or tariffs of fees which diplomatic and consular officers are entitled, by the regulations prescribed by the President, to receive for their services.

Title 48, chap. 5.

Vessels stranded on foreign coasts.
Apr. 14, 1792, s. 3, v. 1, p. 255.

SEC. 4238. Consuls and vice-consuls, in cases where vessels of the United States are stranded on the coasts of their consulates respectively, shall, as far as the laws of the country will permit, take proper measures, as well for the purpose of saving the vessels, their cargoes and appurtenances, as for storing and securing the effects and merchandise saved, and for taking inventories thereof; and the merchandise and effects saved, with the inventories thereof so taken, shall, after deducting therefrom the expenses, be delivered to the owners. No consul or vice-consul shall have authority to take possession of any such merchandise, or other property, when the master, owner, or consignee thereof is present or capable of taking possession of the same.

Title 49.

Passports of United States vessels on departure to foreign country.
June 1, 1796, ss. 1, 2, v. 1, p. 489; Feb. 12, 1831, v. 4, p. 441.

SEC. 4306. Every vessel of the United States, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector for the district where such vessel may be, with a passport, the form for which shall be prescribed by the Secretary of State. In order to be entitled to such passport, the master of every such vessel shall be bound, with sufficient sureties, to the Treasurer of the United States, in the penalty of two thousand dollars, conditioned that the passport shall not be applied to the use or protection of any other vessel than the one described in it; and that, in case of the loss or sale of any vessel having such passport, the same shall, within three months, be delivered up to the collector from whom it was received, if the loss or sale take place within the United States; or within six months, if the same shall happen at any place nearer than the Cape of Good Hope; and within eighteen months, if at a more distant place.

Penalty for departure without passport.

SEC. 4307. If any vessel of the United States shall depart therefrom, and shall be bound to any foreign country, other

than to some port in America, without such passport, the master of such vessel shall be liable to a penalty of two hundred dollars for every such offense.

June 1, 1796, s. 4, v. 1, p. 490.

SEC. 4308. Every unregistered vessel owned by a citizen of the United States, and sailing with a sea-letter, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector of the district where such vessel may be with a passport, for which the master shall be subject to the rules and conditions prescribed for vessels of the United States.

Passports of unregistered vessels.
Mar. 2, 1803, s. 1, v. 2, p. 208.

SEC. 4309. Every master of a vessel, belonging to citizens of the United States, who shall sail from any port of the United States, shall, on his arrival at a foreign port, deposit his register, sea-letter, and Mediterranean passport with the consul, vice-consul, commercial agent, or vice-commercial agent, if any there be at such port; and it shall be the duty of such consul, vice-consul, commercial agent, or vice-commercial agent, on such master or commander producing to him a clearance from the proper officer of the port where his vessel may be, to deliver to the master all of his papers, if such master or commander has complied with the provisions of law relating to the discharge of seamen in a foreign country, and to the payment of the fees of consular officers.

Deposit of ship's papers with consul.
Feb. 28, 1803, s. 2, v. 2, p. 203.

SEC. 4310. Every master of any such vessel who refuses or neglects to deposit the papers as required by the preceding section, shall be liable to a penalty of five hundred dollars, to be recovered by such consul, vice-consul, commercial agent, or vice-commercial agent, in his own name, for the benefit of the United States, in any court of competent jurisdiction.

Penalty for failure to deposit papers with consul.
Ibid.

SEC. 4573. Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale-fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents.

Title 53, chap. 5.

List of crew to be delivered to collector.
Feb. 28, 1803, s. 1, v. 9, p. 203; Apr. 4, 1840, s. 2, v. 2, p. 370.

SEC. 4574. In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a

Mar. 3, 1813, s. 3, v. 2, p. 809.
List of crew to be examined by collector, and certified, etc.

book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of this Title.

Rules as to list of crew.
July 20, 1840, ch. 48, v. 5, pp. 394, 395, 397; Feb. 27, 1877, v. 19, p. 252.

SEC. 4575. The following rules shall be observed with reference to vessels bound on any foreign voyage:

First. The duplicate list of the ship's company, required to be made out by the master and delivered to the collector of the customs, under section forty-five hundred and seventy-three, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

Second. It shall be the duty of the owners of every such vessel to obtain from the *collector of the customs of* the district from which the clearance is made, a true and certified copy of the shipping-articles, containing the names of the crew, which shall be written in a uniform hand, without erasures or interlineations.

Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.

Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for such offense.

Sixth. It shall be the duty of the boarding-officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury and to the United States attorney in his district.

Title 70, chap. 3.

Plundering wrecked vessels, etc.
Mar. 3, 1825, s. 9, v. 4, p. 116.

SEC. 5358. Every person who plunders, steals, or destroys any money, goods, merchandise, or other effects, from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States; and every person who willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; and every person who

holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel, sailing upon the sea, into danger, or distress, or shipwreck, shall be punished by a fine of not more than five thousand dollars, and imprisoned at hard labor not more than ten years.

Conspiracy to cast away vessel. Ibid., s. 28, p. 122.

SEC. 5364. Every person who, on the high seas, or within the United States, willfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafterward underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; and every person who, within the United States, builds, or fits out, or aids in building and fitting out, any vessel with intent that the same be cast away or destroyed with the intent hereinbefore mentioned, shall be punished by a fine of not more than ten thousand dollars, and by imprisonment at hard labor not more than ten years.

That section fifty-three hundred and sixty-five of the Revised Statutes is hereby amended to read as follows:

Aug. 6, 1894.

28 Stat. L., 233. Crimes at sea. See note 2.

Barratry by owner defined and punished. Substitute for R. S., sec. 5365. See sec. 5323.

"SEC. 5365. Every person who, on the high seas, willfully and corruptly casts away or otherwise destroys any vessel of which he is owner, in whole or in part, with intent to prejudice any person that may underwrite any policy of insurance thereon, or any merchant that may have goods thereon, or any other owner of such vessel, shall be punished by imprisonment for life, or for any term of years."

Piracy; see also Vessels of the Navy. See note 1.

SEC. 2. That section fifty-three hundred and sixty-six of the Revised Statutes is hereby amended so that it will read as follows:

Barratry, not by owner, defined and punished. Substitute for R. S., sec. 5366.

"SEC. 5366. Every person, not being an owner, who, on the high seas, willfully and corruptly casts away or otherwise destroys any vessel to which he belongs, being the property of any citizen, shall be punished by imprisonment for life, or for any term of years."

Not retroactive.

SEC. 3. This act shall only apply to acts hereafter committed and shall not affect any case or prosecution now pending.

Attempt to destroy vessel at sea. July 29, 1850, s. 7, v. 9, p. 441.

SEC. 5367. Every person, not being an owner, who, on the high seas, willfully, with intent to destroy the same, sets fire to any vessel, or otherwise attempts the destruction thereof, being the property of any citizen, shall suffer imprisonment at hard labor for a term of not more than ten years nor less than three years.

Title 70, chap. 5.

Forging or altering ship's papers or custom-house documents.

SEC. 5423. If any person falsely makes, forges, counterfeits, or alters any instrument in imitation of, or purporting to be, an abstract or official copy, or certificate of the recording, registry, or enrollment of any vessel, in the office of

*Note 2.*—The original sections of the Revised Statutes here referred to provide capital punishment for these offenses.

Mar. 3, 1825, s. 19, v. 4, p. 120.

any collector of the customs, or a license to any vessel, for carrying on the coasting trade, or fisheries of the United States, or a certificate of ownership, pass, passport, sea-letter, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs, by virtue of his office; or passes, utters, or publishes, or attempts to pass, utter, or publish, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, license, pass, passport, sea-letter, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud, he shall be punished by a fine of not more than one thousand dollars, and by imprisonment at hard labor not more than three years.

See sec. 4191.

## YACHTS.

Sec.
4214. Act Jan. 16, 1895. Bond not required. License of yachts.
4215. Signals of yachts.
4216. Yachts belonging to foreign yacht clubs.
4217. Commissions to yachts.
4218. Entry of yachts.

Title 48, chap. 2.

License of yachts.

Aug. 7, 1848, s. 2, v. 9, p. 274; June 20, 1870, s. 1, v. 16, p. 171; Mar. 3, 1883, ch. 133, v. 22, p. 566.

See act Jan. 16, 1895, amending this section.

SEC. 4214. The Secretary of the Treasury may cause yachts used and employed exclusively as pleasure vessels or designed as models of naval architecture, if built and owned in compliance with the provisions of sections forty-one hundred and thirty-three to forty-one hundred and thirty-five, to be licensed on terms which will authorize them to proceed from port to port of the United States, and by sea to foreign ports, without entering or clearing at the custom-house, such license shall be in such form as the Secretary of the Treasury may prescribe. The owner of any such vessel, before taking out such license, shall give a bond in such form and for such amount as the Secretary of the Treasury shall prescribe, conditioned that the vessel shall not engage in any trade, nor in any way violate the revenue laws of the United States; and shall comply with the laws in all other respects. Such vessels, so enrolled and licensed, shall not be allowed to transport merchandise or carry passengers for pay. Such vessels shall have their name and port placed on some conspicuous portion of their hulls. Such vessels shall, in all respects, except as above, be subject to the laws of the United States, and shall be liable to seizure and forfeiture for any violation of the provisions of this title: *Provided*, That all charges for license and inspection fees for any pleasure vessel or yacht shall not exceed five dollars, and for admeasurement shall not exceed ten cents per ton.

Jan. 16, 1895.

28 Stat. L., 624.

Yachts.

Bonds not required.

SEC. 4. That no bond shall be required on the licensing of yachts; no licensed yacht shall engage in any trade, nor in any way violate the revenue laws of the United States; and every such yacht shall comply with the laws in all respects.

Section one of the act approved March third, eighteen hundred and eighty-three, amending section forty-two hundred and fourteen, Revised Statutes, and so forth, is amended accordingly. R. S., sec. 4214. 1883, Mar. 3, ch. 133 (1 Supp. R. S., 412).

SEC. 5. That any master or owner violating the provisions of this or the preceding section shall be liable to the penalty of two hundred dollars, in addition to any other penalty imposed by law. Penalty.

The Secretary of the Treasury shall have power to remit or mitigate any such penalty if in his opinion it was incurred without negligence or intention of fraud. —may be remitted.

SEC. 6. That this Act shall not invalidate the bonds heretofore given under the requirements of law. Bonds in force.

SEC. 4215. All such licensed yachts shall use a signal of the form, size, and colors prescribed by the Secretary of the Navy; and the owners thereof, shall at all times permit the naval architects in the employ of the United States to examine and copy the models of such yachts. Signals of yachts. Aug. 7, 1848, s. 3, v. 9, p. 274.

SEC. 4216. Yachts, belonging to a regularly organized yacht club of any foreign nation which shall extend like privileges to the yachts of the United States, shall have the privilege of entering or leaving any port of the United States without entering or clearing at the custom-house thereof, or paying tonnage tax. Yachts belonging to foreign yacht clubs. June 29, 1870, s. 2, v. 16, p. 170.

SEC. 4217. For the identification of yachts and their owners, a commission to sail for pleasure in any designated yacht belonging to any regularly organized and incorporated yacht club, stating the exemptions and privileges enjoyed under it, may be issued by the Secretary of the Treasury, and shall be a token of credit to any United States official, and to the authorities of any foreign power, for privileges enjoyed under it. Commissions to yachts. Ibid., s. 3.

SEC. 4218. Every yacht visiting a foreign country under the provisions of the four preceding sections shall, on her return to the United States, make due entry at the custom-house of the port at which, on such return, she shall arrive. Entry of yachts. Ibid., s. 4, p. 171.

## MURDER, MANSLAUGHTER, MAIMING, MUTINY, ETC.


Sec.
1624. Art. 6. Murder by persons on public vessels.
5325. Punishment of death by hanging.
5326. No conviction to work corruption of blood or forfeiture of estate.
5327. Whipping and the pillory abolished.
5328. Jurisdiction of State courts.
5329. Benefit of clergy.
5330. Pardoning power.
5339. Murder.
5340. Delivery of offender's body for dissection, when.
5341. Manslaughter.
5342. Attempt to commit murder or manslaughter.
5343. Punishment of manslaughter.
5344. Officers and owners of steamboats through whose misconduct, etc., life is lost.
5345. Rape.
5346. Assault with a dangerous weapon.
5347. Maltreatment of crew by officers of vessels.
5348. Maiming, etc.
5390. Misprision of felony.
5391. Offenses committed in places ceded to the United States.
1624. Mutiny in the Navy.
5359. Inciting revolt or mutiny on shipboard.
5360. Revolt and mutiny on shipboard.


SEC. 1624. ART. 6. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death. Title 15, chap. 10. Murder. July 17, 1862, s. 1, v. 12, p. 602.

Title 70, chap. 1.

Punishment of death by hanging.
See sec. 5340.
Apr. 30, 1790, s. 33, v. 1, p. 119.

SEC. 5325. The manner of inflicting the punishment of death shall be by hanging.

No conviction to work corruption of blood or forfeiture of estate.
Ibid., s. 24, p. 117.

SEC. 5326. No conviction or judgment shall work corruption of blood or any forfeiture of estate.

Whipping and the pillory abolished.
Feb. 28, 1839, s. 5, v. 5, p. 322.

SEC. 5327. The punishment of whipping and of standing in the pillory shall not be inflicted.

Jurisdiction of State courts.
Mar. 3, 1795, s. 26, v. 4, p. 122.

SEC. 5328. Nothing in this Title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

Benefit of clergy.
Apr. 30, 1790, s. 31, v. 1, p. 119.

SEC. 5329. The benefit of clergy shall not be used or allowed, upon conviction of any crime for which the punishment is death.

Pardoning power.
Feb. 20, 1863, s. 1, v. 12, p. 656.

SEC. 5330. Whenever, by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person is sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, without, in any manner, impairing the legal validity of the other kind, or of any portion of either kind, not pardoned or remitted.

Title 70, chap. 3.

Murder.
Apr. 30, 1790, s. 3, v. 1, p. 113; Mar. 3, 1825, s. 4, v. 4, p. 115.
See sec. 5326.

SEC. 5339. Every person who commits murder—

First. Within any fort, arsenal, dock-yard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States;

Second. Or upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State;

Third. Or who upon any of such waters maliciously strikes, stabs, wounds, poisons, or shoots at any other person, of which striking, stabbing, wounding, poisoning, or shooting, such other person dies, either on land or at sea, within or without the United States, shall suffer death.

Delivery of offender's body for dissection, when.
Apr. 30, 1790, s. 4, v. 1, p. 113.

SEC. 5340. The court before which any person is convicted of murder, may, in its discretion, add to the judgment of death, that the body of the offender be delivered to a surgeon for dissection; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person by him appointed, shall receive and take away the body at the time of execution.

Manslaughter.
Ibid., s. 7; Mar. 3, 157, s. 1, v. 11, p. 250.

SEC. 5341. Every person who, within any of the places or upon any of the waters described in section fifty-three hundred and thirty-nine, unlawfully and wilfully, but without malice, strikes, stabs, wounds, or shoots at, or otherwise injures another, of which striking, stabbing, wounding, shooting, or other injury such other person dies, either on land or sea, within or without the United States, is guilty of the crime of manslaughter.

SEC. 5342. Every person who, within any of the places or upon any of the waters described in section fifty-three hundred and thirty-nine, attempt to commit the crime of murder or manslaughter, by any means not constituting the offense of assault with a dangerous weapon, shall be punished by imprisonment, with or without hard labor, not more than three years, and by a fine of not more than one thousand dollars.

Attempt to commit murder or manslaughter. Mar. 3, 1857, s. 2, v. 11, p. 250.

SEC. 5343. The punishment of manslaughter shall be imprisonment, *not exceeding ten years and a fine not exceeding one thousand dollars*, except as otherwise specially provided by law.

Punishment of manslaughter. Apr. 30, 1790, s. 7, v. 1, p. 113; Mar. 3, 1857, s. 3, v. 11, p. 250; Mar. 3, 1875, ss. 1, 2, v. 18, p. 138.

SEC. 5344. Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel, the life of any person is destroyed, and every owner, inspector, or other public officer, through whose fraud, connivance, misconduct, or violation of law, the life of any person is destroyed, shall be deemed guilty of manslaughter, and, upon conviction thereof before any circuit court of the United States, shall be sentenced to confinement at hard labor for a period of not more than ten years.

Officers and owners of steamboats through whose misconduct, etc., life is lost, guilty of manslaughter. Feb. 28, 1871, s. 57, v. 16, p. 456.

SEC. 5345. Every person who, within any of the places or upon any of the waters specified in section fifty-three hundred and thirty-nine, commits the crime of rape shall suffer death.

Rape. Mar. 3, 1825, s. 4, v. 4, p. 115.

SEC. 5346. Every person who, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, on board any vessel belonging in whole or part to the United States, or any citizen thereof, with a dangerous weapon, or with intent to perpetrate any felony, commits an assault on another shall be punished by a fine of not more three thousand dollars, and by imprisonment at hard labor not more than three years.

Assault with a dangerous weapon. Ibid., s. 22, p. 121.

SEC. 5347. Every master or other officer of any American vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, who, from malice, hatred, or revenge, and without justifiable cause, beats, wounds, or imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel or unusual punishment, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than five years, or by both.

Maltreatment of crew by officers of vessels. Mar. 3, 1835, s. 3, v. 4, p. 776.

SEC. 5348. Every person who, within any of the places upon the land under the exclusive jurisdiction of the United States, or who, upon the high seas, in any vessel belonging to the United States, or to any citizen thereof, maliciously cuts off the ear, cuts out or disables the tongue, puts out an eye, slits the nose, cuts off the nose or lip, or cuts off or disables any limb or member of any person, with intent to maim or disfigure such person, shall be imprisoned at hard

Apr. 30, 1790, s. 13, v. 1, p. 115.

labor not more than seven years, and fined not more than one thousand dollars.

Title 70, chap. 3.

Misprision of felony.

Apr. 30, 1790, s. 6, v. 1, p. 113.

SEC. 5390. Every person who, having knowledge of the actual commission of the crime of murder or other felony upon the high seas, or within any fort, arsenal, dock-yard, magazine, or other place or district of country under the exclusive jurisdiction of the United States, conceals, and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, is guilty of misprision of felony, and shall be imprisoned not more than three years, and fined not more than five hundred dollars.

Certain offenses committed in places ceded to United States, how punished.

Mar. 3, 1825, s. 3, v. 4, p. 115; Apr. 5, 1866, s. 2, v. 14, p. 13.

SEC. 5391. If any offense be committed in any place which has been or may hereafter be, ceded to and under the jurisdiction of the United States, which offense is not prohibited, or the punishment thereof is not specially provided for, by any law of the United States, such offense shall be liable to, and receive, the same punishment as the laws of the State in which such place is situated, now in force, provide for the like offense when committed within the jurisdiction of such State; and no subsequent repeal of any such State law shall affect any prosecution for such offense in any court of the United States.

Title 15, chap. 10.

Mutiny in the Navy.

July 17, 1862, s. 1, v. 12, p. 600.

SEC. 1624. ART. 4. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

First. Who makes, or attempts to make, or unites with any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it; or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer; *

* * * * * * *

Title 70, chap. 3.

Inciting revolt or mutiny on shipboard.

Mar. 3, 1835, s. 2, v. 4, p. 776; Apr. 30, 1790, s. 12, v. 1. p. 115.

SEC. 5359. If any one of the crew of any American vessel on the high seas, or other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master, or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master, or other commanding officer thereof, he shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than five years, or by both such fine and imprisonment.

Revolt and mutiny on shipboard.

Mar. 3, 1835, s. 1, v. 4, p. 775; Apr. 30, 1790, s. 8, v. 1. p. 113.

SEC. 5360. If any one of the crew of an American vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority

and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, he is guilty of a revolt and mutiny, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor not more than ten years.

## NATURALIZATION—CITIZENSHIP.

[*See also* EXPATRIATION.]

Sec.
2165. Aliens, how naturalized.
2166. Aliens honorably discharged from military service.
2167. Minor residents.
2168. Widow and children of declarants.
2170. Residence of five years in United States.
2171. Alien enemies not admitted.
2172. Children of persons naturalized under certain laws to be citizens.
2174. Naturalization of seamen.

### NATURALIZATION.

Title 30.

Aliens, how naturalized.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

Declaration of intention.

Apr. 14, 1802, ss. 1, 3, v. 2, pp. 153, 155; May 26, 1824, s. 4, v. 4, p. 69; Feb. 1, 1876, ch. 5, v. 19, p. 2.

See Citizenship, referring to Chinese.

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Oath to support the Constitution of the United States.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Residence in United States, or States, and good moral character.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Titles of nobility to be renounced.

Apr. 14, 1802, s. 1, v. 2, p. 153.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in

the court to which his application is made, and his renunciation shall be recorded in the court.

July 26, 1894.

Supp. R. S., 1892-95, pp. 206-207.

Naturalization of aliens serving in Navy or Marine Corps.

R. S., sec. 2166.

Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps.

Minor residents.

May 26, 1824, s. 1, v. 4, p. 69.

SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of declarants.

Mar. 26, 1804, s. 2, v. 2, p. 293.

SEC. 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Residence of five years in United States.

Mar. 3, 1813, s. 12, v. 2, p. 811.

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Alien enemies not admitted.

Apr. 14, 1802, s. 1, v. 2, p. 153; July 30, 1813, ch. 36, v. 3, p. 53.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; * * * nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Children of persons naturalized under certain laws to be citizens.

Apr. 14, 1802, s. 4, v. 2, p. 155.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the natu-

ralization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; * * *

Naturalization of seamen. June 7, 1872, s. 29, v. 17, p. 268. See title "Pilots and pilotage."

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

## CITIZENSHIP.

Sec.
1992. Who are citizens.
1993. Citizenship of children of citizens born abroad.
1994. Citizenship of married women.
1996. Rights as citizens forfeited for desertion, etc.
1997. Certain soldiers and sailors not to incur the forfeitures of the last section.

Sec.
Act May 3, 1875. Immigration of certain classes prohibited.
Act May 5, 1992. Affecting Chinese.
—— Exclusion of aliens.

Title 25.

Who are citizens. Apr. 9, 1866, s. 1, v. 14, p. 27.

SEC. 1992. All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

May 6, 1882.

Chinese excepted. May 6, 1882, s. 14, v. 22, p. 61.

Hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Title 25.

Citizenship of children of citizens born abroad. Apr. 14, 1802, s. 4, v. 2, p. 155; Feb. 10, 1855, s. 1, v. 10, p. 604.

SEC. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Citizenship of married women. Feb. 10, 1855, s. 2, v. 10, p. 604.

SEC. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

Rights as citizens forfeited for desertion, etc. Mar. 3, 1865, s. 21, v. 13, p. 490.

SEC. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of

trust or profit under the United States, or of exercising any rights of citizens thereof.

Certain soldiers and sailors not to incur the forfeitures of the last section.
July 19, 1867, ch. 28, v. 15, p. 14.

SEC. 1997. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Mar. 3, 1875.

Immigration of alien convicts, etc., forbidden.
Mar. 3, 1875, ch. 140, s. 5, v. 18, p. 476.
See note 1.

It shall be unlawful for aliens of the following classes to immigrate into the United States, namely, persons who are undergoing a sentence for conviction in their own country of felonious crimes other than political or growing out of the result of such political offences, or whose sentence has been remitted on condition of their emigration, and women "imported for the purposes of prostitution." * * *

May 5, 1892.

27 Stat. L., 25.
Chinese.
Immigration laws extended for ten years.
See Appendix, "Chinese."

That all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act.

Aug. 18, 1894.

28 Stat. L., 372.
Exclusion of aliens; executive decision final.
1891, Mar 3, ch. 551, s. 8 (1 Supp. R. S., 936).
1893, Mar. 3, ch. 206, s. 5, p. 118; 142 U. S., 651.

In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

Head money increased.
1882, Aug. 3, ch. 376, s. 1. (1 Supp. R. S., 370.)

Bureau of Immigration: The head money from alien passengers on and after the first day of October next, collected under the Act of August third, eighteen hundred and eighty-two, to regulate immigration, shall be one dollar in lieu of the fifty cents as provided in said Act;

Immigration receipts to be covered into Treasury.

And such head money and all other receipts which shall be collected on and after July first, eighteen hundred and ninety-five, in connection with immigration shall be covered into the Treasury; * * * .

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*Note 1.*—The first and second sections of the act of May 6, 1882, chap. 126, vol. 22 p. 58, suspended the immigration of Chinese laborers to the United States, after ninety days from the passage of the act, for ten years, and provided that the master of any vessel who should knowingly bring within the United States, and land or permit to be landed any Chinese laborer from any foreign port or place, should be deemed guilty of a misdemeanor and, on conviction thereof, be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and also might be imprisoned for a term not exceeding one year. The words "Chinese laborers" are to be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

A child born in the United States of alien parents, who have never been naturalized, is by the fact of birth a native-born citizen of the United States, entitled to all the rights and privileges of citizenship. So of children born in the United States of alien subjects who have declared their intention of becoming citizens of the United States. Children born abroad of aliens (who subsequently emigrated to the United States with their families and were naturalized here during the minority of their children) are citizens of the United States. (Op., X., pp. 328, 329, Sept. 1 and 2, 1862. Bates.)

An American citizen, domiciled in a foreign country, who has taken an oath of allegiance to the foreign sovereign is not under the protection of the United States. (Murray *v.* The Charming Betsey, 2 Cranch, S. C. Brightly's Federal Digest, p. 41.)

The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, and until their successors are appointed; and nominations for such offices shall be made to the Senate by the President as soon as practicable after the passage of this Act.

Commissioners of immigration, how appointed.

## NEUTRALITY—ALIEN ENEMIES, ETC.

Sec
5281. Accepting a foreign commission.
5282. Enlisting in foreign service.
5283. Arming vessels against people at peace with the United States.
5284. Arming vessels to cruise against citizens of the United States.
5285. Augmenting force of foreign vessel of war.
5286. Military expeditions against people at peace with United States.
5287. Enforcement of foregoing provisions.
Sec.
5288. Compelling foreign vessels to depart.
5289. Armed vessels to give bond on clearance.
5290. Detention by collectors of customs.
5291. Construction of this Title.
—— Amending sec. 5287.
—— International convention—amelioration of wounded, etc.

Title 67.

Accepting a foreign commission.
Apr. 20, 1818, s. 1, v. 3, p. 447.

SEC. 5281. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and imprisoned not more than three years.

Enlisting in foreign service.
Idem, s. 2, p. 448.

SEC. 5282. Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of high misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned not more than three years.

Arming vessels against people at peace with the United States.
Idem, s. 3.

SEC. 5283. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equip-

ment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Arming vessels to cruise against citizens of the United States. Idem, s. 4. See note 1.

SEC. 5284. Every citizen of the United States who, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any private vessel of war, or privateer, with intent that such vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or who takes the command of, or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel, with a view to share in the profits thereof, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years. And the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Augmenting force of foreign vessel of war. Apr. 20, 1818, s. 5, v. 3, p. 448.

SEC. 5285. Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and be imprisoned not more than one year.

Military expeditions against people at peace with the United States. Idem, s. 6, p. 449.

SEC. 5286. Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

Enforcement of foregoing provisions. Idem, s. 8; Feb. 18, 1875, v. 18, p. 320.

SEC. 5287. The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted

*Note 1.*—Section 4090 of the Revised Statutes empowers United States ministers to issue all manner of writs to prevent citizens of the United States from enlisting in the military or naval service of a country to make war upon any foreign power with whom the United States are at peace, or in the service of one portion of the people against another portion of the same people, and to carry out this power he may resort to such force belonging to the United States as may at the time be within his reach.

to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this Title; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to the execution of the prohibitions and penalties of this Title, and to the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

Compelling foreign vessels to depart.
Apr. 20, 1818, s. 9, v. 3, p. 449.

SEC. 5288. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

Armed vessels to give bond on clearance.
Idem, s. 10.

SEC. 5289. The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Detention by collectors of customs.
Apr. 20, 1818, s. 11, v. 3, p. 450.

SEC. 5290. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such

bond and security as is required of the owners of armed vessels by the preceding section.

Construction of this title.
Idem, ss. 2, 13, v. 3, pp. 448, 450; Feb. 27, 1877, v. 19, p. 252.
See note 2.

SEC. 5291. The provisions of this Title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States, and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

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*Note 2.*—An officer of the Navy has no right, without express direction from his Government, to enter the territory of a country at peace with the United States and seize property there claimed by citizens of the United States. Application for redress should be made to the judicial tribunals of the country. (Cadwalader's State Department Digest, p. 219, cites 2 Paine, 324.)

A revolutionary party like a foreign belligerent party, is supreme over the country it conquers, as far and as long as its arms can carry and maintain it. (Op., IX, 140, Black, May 15, 1858.)

By the law of nations one government can not enter upon the territories of another, or claim any right whatever therein, for if this be done by force it is a usurpation, and if it be done by any underhand bargaining with individuals, who have not the explicit consent of their Government, it is mean and unfair. (Op., IX, 286, Black, Mar. 14, 1859.)

One nation can not execute the penal laws of another, and consequently a foreign vessel engaged in the slave trade can not lawfully be captured by an American cruiser. The African slave trade is not contrary to the law of nations. (Cadwalader's State Department Digest, p. 217, cites 10 Wheaton, 66.)

The United States can not purchase a grant of land in, or concession of a right of way over, the territories of another nation as could an individual or private corporation, since by the law of nations one Government can not enter upon the territory of another, or claim any right whatever therein. (Cadwalader's Digest, p. 218, cites Op., IX, 286.)

The *right of search* does not exist in time of peace. A cruiser of one nation has the right to know the national character of any strange ship she may meet at sea, but the right is not a perfect one. The *right of inquiry* has well-defined limitations: 1. Inquiring ship must put up his own colors, or in some way make himself fully known, before he can lawfully demand such knowledge from the other vessel. 2. If refused, may fire blank shot or cartridge. 3. If still refused, a shotted gun may be fired across bows by way of positive *summons*. 4. Any further measure must be at the peril of the inquiring vessel. If stranger is arrested, injured, or captured, and proves not a pirate, but has a lawful right to navigate the seas, the injury must be atoned for. The right of a public ship to *hail or* speak a stranger, is in all respects analogous thereto, and must be exercised within the same limits. 5. The answer by words or by hoisting flag must be taken as true. Can not be stopped, visited, or searched. 6. The right of inquiry can be exercised only on the high seas. No naval officer has a right to go into the harbor of a nation with which his Government is at peace, to inquire into the nationality of a vessel lying there. (Op., IX, p. 456, Black, July 28, 1860. Case of the *General Miramon*.)

Ships of war enjoy the full rights of exterritoriality in foreign ports and territorial waters. Merchant ships are a part of the territory of their country, and are so treated on the high seas, and partially, but not wholly so, while in territorial waters of a foreign country. Crimes committed on board ship on the high seas, are triable in the country to which she belongs. In port the local authority has jurisdiction of acts committed on board of a foreign merchant ship, provided those acts affect the peace of the port, but not otherwise; and its jurisdiction does not extend to acts internal to the ship or transpiring on the high seas. The authority of the ship's country, in these cases, is not taken away by the fact that the actors are foreigners provided they be of the crew or passengers of the ship. The local authority has right to enter on board a foreign merchantman in port for the purpose of inquiry universally—but for the purpose of arrest only in matters within its ascertained jurisdiction. (Op. VIII, 73, Cushing, Sept. 5, 1856.)

"Neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent powers contraband articles subject to the right of seizure *in transitu*. The right of the neutral to transport, and of the hostile power to seize, are conflicting rights, and neither party can charge the other with criminal act." (1 Kent's Com., p. 142.) "There is nothing in our laws, or in the law of nations, that forbid our citizens from sending armed vessels as well as munitions of war to foreign ports for sale. It is a commercial venture which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." (7 Wheaton, 340.) Cited in Op., XI, p. 408, Dec. 23, 1865, Speed.

## INTERNATIONAL CONVENTION—AMELIORATION OF WOUNDED, ETC.

Convention between the United States, Baden, Switzerland, Belgium, Denmark, Spain, France, Hesse, Italy, Netherlands, Portugal, Prussia, Würtemberg, Sweden, Greece, Great Britain, Mecklenberg-Schwerin, Turkey, Bavaria, Austria, Persia, Salvador, Montenegro, Servia, Bolivia, Chili, Argentine Republic, and Peru; with additional articles; for the amelioration of the wounded in armies in the field; concluded August 22, 1864; acceded by the President March 1, 1882; accession concurred in by the Senate March 16, 1882; proclaimed as to the original convention, but with reserve as to the additional articles, July 26, 1882.

Hospitals and ambulances with sick or wounded, etc.

ARTICLE I. Ambulances and military hospitals shall be acknowledged to be neuter, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein.

Exception.

Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

Employees, etc., respected as neutrals.

ART. 2. Persons employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality, whilst so employed, and so long as there remain any wounded to bring in or to succor.

Employees, etc., protected by occupying forces.

ART. III. The persons designated in the preceding article may, even after occupation by the enemy, continue to fulfil their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong.

Under such circumstances, when these persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

Employees in hospitals to take away private property only.

ART. IV. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property.

Under the same circumstances, an ambulance shall, on the contrary, retain its equipment.

Persons serving the wounded to remain free.

ART. V. Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The generals of the belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it.

Houses where the wounded are cared for to be protected.

Exemptions for care of wounded.

Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed.

Soldiers sick or wounded to be cared for.

ART. VI. Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

Delivery of wounded, etc.

Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement, when circumstances permit this to be done, and with the consent of both parties.

Soldiers incapacitated for service to be sent home.

Those who are recognized after their wounds are healed, as incapable of serving, shall be sent back to their country.

Conditions of return.

The others may also be sent back, on condition of not again bearing arms during the continuance of the war.

Evacuations, etc., to have absolute neutrality.

Evacuations, together with the persons under whose directions they take place, shall be protected by an absolute neutrality.

Hospital, ambulance, and evacuation flag, etc.

Arm badge.

ART. VII. A distinctive and uniform flag shall be adopted for hospitals, ambulances, and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

Flag and arm-badge to bear red cross, etc.

The flag and the arm-badge shall bear a red cross on a white ground.

Execution of details of convention.

ART. VIII. The details of execution of the present convention shall be regulated by the commanders-in-chief of belligerent armies, according to the instructions of their respective Governments, and in conformity with the general principles laid down in this convention.

ADDITIONAL ARTICLES.

Rights of employees, etc., in hospitals or ambulances.

ARTICLE I. The persons designated in Article II of the Convention shall, after the occupation by the enemy, continue to fulfil their duties, according to their wants, to the sick and wounded in the ambulance or the hospital which they serve. When they request to withdraw, the commander of the occupying troops shall fix the time of departure, which he shall only be allowed to delay for a short time in case of military necessity.

Salary of neutrals, etc., when in enemy's hands.

ART. II. Arrangements will have to be made by the belligerent powers to insure to the neutralized person, fallen into the hands of the army of the enemy, the entire enjoyment of his salary.

Definition of the term "ambulance."

ART. III. Under the conditions provided for in Articles I and IV of the Convention, the name "ambulance" applies to field hospitals and other temporary establishments, which follow the troops on the field of battle to receive the sick and wounded.

Charges for quartering of troops, and contributions, etc.

ART. IV. In conformity with the spirit of Article V of the Convention, and to the reservations contained in the protocol of 1864, it is explained that for the appointment of the charges relative to the quartering of troops, and of the contributions of war, account only shall be taken in an equitable manner of the charitable zeal displayed by the inhabitants.

Wounded to be returned to their country on condition of not again bearing arms in the war.

ART. V. In addition to Article VI of the Convention, it is stipulated that, with the reservation of officers whose detention might be important to the fate of arms and within the limits fixed by the second paragraph of that

article, the wounded fallen into the hands of the enemy shall be sent back to their country, after they are cured, or sooner if possible, on condition, nevertheless, of not again bearing arms during the continuance of the war.

*Articles concerning the Marine.*

Boats picking up the shipwrecked or wounded, etc.

ART. VI. The boats which, at their own risk and peril, during and after an engagement pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, as far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is intrusted to the humanity of all the combatants. The wrecked and wounded thus picked and saved must not serve again during the continuance of the war.

Religious, medical, and hospital staff of a captured vessel declared neutral.

ART. VII. The religious, medical, and hospital staff of any captured vessel are declared neutral, and, on leaving the ship, may remove the articles and surgical instruments which are their private property.

Duties of staff officers, etc.

ART. VIII. The staff designated in the preceding article must continue to fulfill their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with the second paragraph of the first additional article.

Pay and allowance of staff.

The stipulations of the second additional article are applicable to the pay and allowance of the staff.

Captured hospital ships to remain under martial law, etc.

ART. IX. The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

*[*The vessels not equipped for fighting, which, during peace, the government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriate to the special service on which they are employed.*]

Merchant vessels performing hospital duty to be treated as neutral, etc.

ART. X. Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel having been visited

*In the published English text, from which this version of the Additional Articles is taken, the paragraph thus marked in brackets appears in continuation of Article IX. It is not, however, found in the original French text adopted by the Geneva Conference, October 20, 1868.

By an instruction sent to the United States minister at Berne, January 20, 1883, the right is reserved to omit this paragraph from the English text, and to make any other necessary corrections, if at any time hereafter the Additional Articles shall be completed by the exchange of the ratifications hereof between the several signatory and adhering powers.

by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

Cargo of merchant ship protected; when; proviso.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerents.

Right of belligerents.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations. In urgent cases special conventions may be entered into between commanders-in-chief, in order to neutralize temporarily and in a special manner the vessels intended for the removal of the sick and wounded.

Wounded or sick sailors and soldiers, when embarked, etc.

ART. XI. Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Return to native country.

Their return to their own country is subject to the provisions of Article VI of the Convention, and of the additional Article V.

White flag with red cross, etc., used by vessels claiming neutrality.

ART. XII. The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross. The belligerents may exercise in this respect any mode of verification which they may deem necessary.

Military hospitals painted white, etc.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

Hospital ships, etc., and staff to be treated as neutral.

ART. XIII. The hospital ships which are equipped at the expense of the aid societies, recognized by the governments signing this Convention, and which are furnished with a commission emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral, as well as the whole of their staff. They shall be recognized and protected by the belligerents.

Flag sign, etc., of neutrality.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colors. The outer painting of these hospital ships shall be white with red strake.

Aid and assistance to wounded and wrecked belligerents, without distinction of nationality.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

They must take care not to interfere in any way with the movements of the combatants. During and after the battle they must do their duty at their own risk and peril.

Rights of belligerents to control and visit vessels, etc.

The belligerents shall have the right of controlling and visiting them; they will be at liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

The wounded and wrecked picked up by these ships cannot be reclaimed by either of the combatants, and they will be required not to serve during the continuance of the war.

Wounded and wrecked picked up, etc., can not be reclaimed.

ART. XIV. In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Right of belligerents to suspend Convention, etc.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

Notice of suspension of Convention, etc., to be given.

## ALIEN ENEMIES.

Sec.
4067. Removal of alien enemies.
4068. Time for removal.
4069. Jurisdiction of United States courts over alien enemies.
4070. Duties of marshals in removing alien enemies.

Title 47.

Removal of alien enemies. July 6, 1798, s. 1, v. 1, p. 577.

SEC. 4067. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upward, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed, as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

Time for removal. Ibid.; July 6, 1812, ch. 130, v. 2, p. 781.

SEC. 4068. When an alien who becomes liable as an enemy, in the manner prescribed in the preceding section, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

Jurisdiction of United States court over alien enemies.
July 6, 1798, s. 2, v. 1, p. 577.

SEC. 4069. After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized, and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed.

Duties of marshal in removing alien enemies.
Ibid., s. 3, p. 578.

SEC. 4070. When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor, and to execute such order in person, or by his deputy, or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be.

## PATENTS AND PATENTED ARTICLES.

Sec.
1537. Patent articles for marine engines.
4886. Inventions patentable.
4887. Patents for inventions previously patented abroad.

Sec.
Act Mar. 3, 1883. Patents without fees in certain cases.

Title 15, chap. 6.

Patented articles connected with marine engines.
July 18, 1861, s. 3, v. 12, p. 268.

SEC. 1537. No patented article connected with marine engines shall hereafter be purchased or used in connection with any steam-vessels of war until the same shall have been submitted to a competent board of naval engineers, and recommended by such board, in writing, for purchase and use.

Title 60, chap. 1.

Inventions patentable.
July 8, 1870, s. 24, v. 16, p. 201.

SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor.

Patents for inventions previously patented abroad.

SEC. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first pat-

ented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years.

July 8, 1870, s. 25, v. 16, p. 201.

The Secretary of the Interior and the Commissioner of Patents are authorized to grant any officer of the government, except officers and employees of the Patent Office, a patent for any invention of the classes mentioned in section forty-eight hundred and eighty six of the Revised Statutes, when such invention is used or to be used in the public service, without the payment of any fee: *Provided*, That the applicant in his application shall state that the invention described therein, if patented, may be used by the government or any of its officers or employees in the prosecution of work for the government, or by any other person in the United States, without the payment to him of any royalty thereon, which stipulation shall be included in the patent.

Mar. 3, 1883.

22 Stat. L. 603.

Patents without fees in certain cases.

Mar. 3, 1883, v. 22, p. 625.

See note 1.

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*Note 1.*—Where proposals are invited for an article, and one of the bidders claims that he has a patent on it, the contract should not be awarded to any other unless satisfactory evidence is furnished that the other (not the patentee) has authority from the patentee to manufacture and sell it. (Op., XV, 26, July 23, 1875, Pierrepont.)

An official in the military service not specially employed to make experiments may devise new and useful improvements in arms, tents, and war material, and will be entitled to the benefits of his inventions and to letters patent therefor equally with any other citizen. (C. C., VII, 219; Wallace, 12, p. 236.)

Where a contract between a patentee and the Government for the use of an invention provides that it may be determined by notice from the patentee, the Government can determine it only by discontinuing its use. (C. C., IV, p. 113. Affirmed by Supreme Court. See Holt's Digest, p. 88 and p. 112, for discussion of the rights of Government employees to compensation for the use of their inventions by the Government.)

The Secretary of the Navy cannot legally contract with the patentee for the purchase of his patent, or for a license to use it, under an appropriation limited to the purchase of material and the employment of labor in the manufacture of such article out of it.

19 A. G. O., p. 407.

## PENSIONS.

Sec.
4692. Who may have pensions.
4693. Classes enumerated.
4694. Limitation in case of disability.
4695. Pension for total disability.
4696. Rate of pension shall be according to rank held at time disability was contracted.
4697. Rate and commencement of pension for permanent and specific disabilities, etc.
4698. Rate and commencement of pension for permanent and specific disabilities subsequent to June 4, 1872.
4698½. Commencement of increase for disabilities not permanent and specific.
Act Mar. 4, 1890. Pensions, increase to totally helpless soldiers and sailors.
4699. Pensions for disability not otherwise provided for.
4700. Sick leave, sick furlough, veteran furlough, line of duty.
4701. Date when service terminates.
4702. Widows and minors, when entitled.
4703. Increase pension to widows, etc.
4704. Legitimacy of children.
4705. Widows of colored and Indian soldiers entitled.
4706. Abandonment by widow of minor child or children forfeits pension.
4707. Succession of dependent relatives.
4708. Remarriage.
4711. Arrears of pension.
4712. Provisions of former acts extended.
Act Jan., 1879. Commencement of pensions.
4713. Commencement of ante-rebellion pensions.
Act July 26, 1892. Declarations and other papers in pension claims, before whom executed.
4715. Two pensions not allowable.
4716. Loyalty requisite.
4718. Accrued pension, in whom vested.
4719. Unclaimed pensions, disposition of.
4720. Pensions under special acts.
4724. Both pension and pay not allowed unless, etc.
4728. Pension to officers and seamen of the Navy disabled prior to March 4, 1861.
4729. Naval pensions to widows and children.
Act Mar. 3, 1877. Pensions to engineers in Navy to be according to relative rank.
Act Mar. 3, 1877. Rates fixed by law for total disability, Navy and Marine Corps.
4734. Pensions are not to be withheld.
4735. Time for which a widow shall not receive a pension.
4736. Pensions to certain soldiers and sailors of the war of 1812.
4737. Rate of pension to soldiers and sailors of the war of 1812.
4738. Pensions to surviving widows of officers, etc., of the war of 1812.
4739. Proof required.
4740. Loss of discharge certificate.
4741. Pension to officers and seamen of revenue-cutters.
4742. Certain claims for Revolutionary pensions prohibited.
4743. Evidence necessary to enable widows of Revolutionary soldiers to obtain pensions.
4745. Any pledge, mortgage, sale, assignment, or transfer of pension void.
4747. Pension not liable to attachment.
4748. Commissioner of Pensions shall furnish printed instructions free of charge.
4749. Certain soldiers and sailors not to be deemed deserters.

Title 57.

Who may have pensions.

July 14, 1862, s. 1; Mar. 3, 1873, s. 1, v. 17, p. 566; June 6, 1874, v. 18, p. 61; Mar. 3, 1877, v. 19, p. 403.

SEC. 4692. Every person specified in the several classes enumerated in the following section, who has been, since the fourth day of March, eighteen hundred and sixty-one, or who is hereafter disabled under the conditions therein stated, shall, upon making due proof of the fact, according to such forms and regulations as are or may be provided in pursuance of law, be placed on the list of invalid pensioners of the United States, and be entitled to receive, for a total disability, or a permanent specific disability, such pension as is hereinafter provided in such cases; and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability; and such pension shall commence as hereinafter provided, and continue during the existence of the disability.

Classes enumerated.

SEC. 4693. The persons entitled as beneficiaries under the preceding section are as follows:

Officers of Army and Navy, and enlisted men, etc. 19 A. G. Op., p. 586.

Mar. 3, 1873, s. 1; July 14, 1862, s. 1.

Whether regularly mustered or not.

First. Any officer of the Army, including regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine Corps, whether regularly mustered or not, disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty.

Second. Any master serving on a gun-boat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gun-boat or war-vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated while in the line of duty, for procuring his subsistence by manual labor.

Master, etc. serving on gun-boat, etc. July 4, 1864, s. 11; Mar. 3, 1873, s. 1; July 14, 1862, s. 10.

Third. Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly organized military or naval force of the United States, or who otherwise volunteered and rendered service in any engagement with rebels or Indians, disabled in consequence of wounds or injury received in the line of duty in such temporary service. But no claim of a State militiaman, or non-enlisted person, on account of disability from wounds, or injury received in battle with rebels or Indians, while temporarily rendering service, shall be valid unless prosecuted to a successful issue prior to the fourth day of July, eighteen hundred and seventy-four.

Volunteers, not enlisted, etc. July, 1862, res. 16; Mar. 3, 1873, s. 1, v. 17, p. 566; July 4, 1864, s. 9; July 27, 1868, s. 11; Mar. 3, 1865, s. 2; Mar. 3, 1873, s. 1; July 25, 1866, s. 1; Mar. 3, 1877, v. 19, p. 403.

Fourth. Any acting assistant or contract surgeon disabled by any wound or injury received or disease contracted in the line of duty while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transitu, or in hospital.

Acting assistant surgeon, etc.

Fifth. Any provost-marshal, deputy provost-marshal, or enrolling-officer disabled, by reason of any wound or injury, received in the discharge of his duty, to procure a subsistence by manual labor.

Provost-marshal, etc.

That the act entitled "An act amending the pension law so as to remove the disability of those who, having participated in the rebellion, have since its termination enlisted in the Army of the United States, and become disabled," approved March third, eighteen hundred and seventy-seven, be, and the same is hereby, amended so as to read as follows:

Aug. 1, 1892.

27 Stat. L., 340. Supp. R. S., 1892–95, p. 62. Pensions. Substitute for Mar. 3, 1877, ch. 120 (1 Supp. R. S., 147). See note 1.

"That the law prohibiting the payment of any money on account of the pensions to any person, or to the widow, children, or heirs of any deceased person who, in any manner, engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterward voluntarily enlisted in either the Navy or Army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty."

— may be paid to persons aiding rebellion, afterwards disabled in U. S. Army or Navy.

SEC. 4694. No person shall be entitled to a pension by reason of wounds or injury received or disease contracted

Limitation in cases of disability incurred since July 27, 1868.

*Note 1.*—By R. S., sec. 4716, no pension is to be paid to any person, or those claiming under him, "who in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States."

The act of 1877, March 3, ch. 120 (1 Supp. R. S., 147), directed that this prohibition United States, but omitted any reference to the Navy. It is the object of this act to supply that omission.

should not apply to persons who afterwards voluntarily enlisted in the Army of the

Other exceptions are made to the rule contained in R. S., sec. 4716, by 1878, March 9, ch. 28, secs. 5, 6 (1 Supp. R. S., 154, 155), granting pensions for service in the war of 1812; by 1887, January 29, ch. 70, sec. 5 (1 Supp. R. S., 524), granting pensions for service in the Mexican war; and by 1892, July 27, ch. 277, sec. 6, *ante*, p. 55, granting pensions for service in the Indian wars of 1832–1842.

The Interior Department has also held (6 Pension Decisions, 289) that this section has no application to claims under the act of 1890, June 27, ch. 634 (1 Supp. R. S., 760).

Mar. 3, 1873, s. 1, v. 17, p. 567; July 27, 1868, s. 2. See note 2.

See secs. 4756, 4757, Pension Funds, as to Service Pensions.

in the service of the United States subsequent to the twenty-seventh day of July, eighteen hundred and sixty-eight, unless the person who was wounded, or injured, or contracted the disease was in the line of duty; and, if in the military service, was at the time actually in the field, or on the march, or at some post, fort, or garrison, or en route, by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States, or to some other vessel or naval station, or hospital.

Rates of pension for total disability.

Mar. 3, 1873, s. 2; July 14, 1862, s. 1.

Enrolling officer, provost and deputy provost marshal.

July 25, 1866, s. 1.

Contract surgeon.

Mar. 3, 1865, s. 2; Mar. 3, 1873, s. 2, v. 17, p. 567. See note 3.

See sec. 4699

SEC. 4695. The pension for total disability shall be as follows, namely: For lieutenant-colonel and all officers of higher rank in the military service and in the Marine Corps, and for captain, and all officers of higher rank, commander, surgeon, paymaster, and chief engineer, respectively ranking with commander by law, lieutenant commanding and master commanding, in the naval service, thirty dollars per month; for major in the military service and in the Marine Corps, and lieutenant, surgeon, paymaster, and chief engineer, respectively ranking with lieutenant by law, and passed assistant surgeon in the naval service, twenty-five dollars per month; for captain in the military service and in the Marine Corps, chaplain in the Army, and provost-marshal, professor of mathematics, master, assistant surgeon, assistant paymaster, and chaplain in the naval service, twenty dollars per month; for first lieutenant in the military service and in the Marine Corps, acting assistant or contract surgeon, and deputy provost-marshal, seventeen dollars per month; for second lieutenant in the military service and in the Marine Corps * * * ensign, and pilot in the naval service, and enrolling officer, fifteen dollars per month; for cadet midshipman, passed midshipman, midshipmen, clerks of admirals and paymasters and of other officers commanding vessels, * * * master's mate, and all warrant officers in the naval service, ten dollars per month; and for all other persons whose rank or office is not mentioned in this section, eight dollars per month; and the masters, pilots, engineers, sailors, and crews upon the gun-boats and war-vessels, shall be entitled to receive the pension allowed herein to those of like rank in the naval service.

June 18, 1878.

20 Stat. L., 166. Supp. R.S., p.p. 193-94.

That from and after July sixteenth, eighteen hundred and sixty-two, pensions granted to lieutenant-commanders in the Navy for disability, or on account of their death, shall

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*Note 2.*—As to rate for passed assistant engineers, assistant engineers, and cadet engineers in the Navy, see act March 3, 1877. As to rate for "ensigns," "cadet midshipmen," "clerks of admirals," and of "other officers commanding vessels," see section 2, March 3, 1873. For lieutenant-commanders, see act June 18, 1878.

*Note 3.*—A soldier traveling under orders, in any manner, is "on the march," and in the line of duty. (Pension Office Digest, p. 158.)

When "not in line of duty:" while on furlough; while on leave to attend to private business; while violating any established Army regulation; while bathing, unless under orders to do so; suicide, unless the result of insanity; wrestling or scuffling with comrades; foraging, unless under orders, even if granted leave to do so; while confined in a military prison on charge of desertion; while undergoing sentence of court-martial. (Pension Office Decisions, pp. 157, 160.)

be the same as theretofore provided for lieutenants-commanding.

Lieutenant-commanders' pension.
R. S., sec. 4695.

Title 57.

SEC. 4696. Every commissioned officer of the Army, Navy, or Marine Corps shall receive such and only such pension as is provided in the preceding section, for the rank he held at the time he received the injury or contracted the disease which resulted in the disability, on account of which he may be entitled to a pension; and any commission or presidential appointment, regularly issued to such person, shall be taken to determine his rank from and after the date, as given in the body of the commission or appointment conferring said rank: *Provided*, That a vacancy existed in the rank thereby conferred; that the person commissioned was not disabled for military duty; and that he did not willfully neglect or refuse to be mustered.

Rate of pension shall be according to rank held at time disability was contracted.
Mar. 3, 1873, s. 2, v. 17, p. 567; July 14, 1862, s. 1; June 6, 1866, s. 7.
See note 4.

SEC. 4697. For the period commencing July fourth, eighteen hundred and sixty-four, and ending June third, eighteen hundred and seventy-two, those persons entitled to a less pension than hereinafter mentioned, who shall have lost both feet in the military or naval service and in the line of duty, shall be entitled to a pension of twenty dollars per month; for the same period those persons who, under like circumstances, shall have lost both hands or the sight of both eyes, shall be entitled to a pension of twenty-five dollars per month; and for the period commencing March third, eighteen hundred and sixty-five, and ending June third, eighteen hundred and seventy-two, those persons who under like circumstances shall have lost one hand and one foot shall be entitled to a pension of twenty dollars per month; and for the period commencing June sixth, eighteen hundred and sixty-six, and ending June third, eighteen hundred and seventy-two, those persons who under like circumstances shall have lost one hand or one foot shall be entitled to a pension of fifteen dollars per month; and for the period commencing June sixth, eighteen hundred and sixty-six, and ending June third, eighteen hundred and seventy-two, those persons entitled to a less pension than hereinafter mentioned, who by reason of injury received or disease contracted in the military or naval service of the United States and in the line of duty shall have been permanently and totally disabled in both hands, or who shall have lost the sight of one eye, the other having been previously lost, or who shall have been otherwise so totally and permanently disabled as to render them utterly helpless, or so nearly so as to require regular personal aid and attendance of another person, shall be entitled to a pension of twenty-five dollars per month; and for the same period those who under like circumstances shall have been totally and permanently disabled in both feet or in one hand and one foot, or otherwise so disabled as to be incapacitated for the performance

Rate and commencement of pension for permanent and specific disabilities subsequent to July 4, 1864, and prior to June 3, 1872.
Mar. 3, 1873, s. 3; July 4, 1864, s. 5; June 6, 1866, s. 1; July 25, 1886, s. 5; Mar. 3, 1865, s. 3.

See act June 16, 1880, and act Mar. 4, 1890.

For loss of hand and foot, see act Feb. 28, 1877.

For loss of both hands, both eyes, or both feet, see act June 17, 1878, and Mar. 3, 1879.

For leg amputated at hip joint, see act Mar. 3, 1879.

Sec. 1, act June 6, 1866.

Sec. 12, act July 27, 1868.

As to total and permanent helplessness, see amendment act June 18, 1874, and act June 16, 1880.

*Note 4.*—The rank of soldiers at time of disability governs rate of pension. Rank under a commission dated after the contraction of disability does not fix rate not conferred by a commission unless a vacancy existed in such rank. Pension of widow to be rated according to rank of husband at the time he received the injury which resulted in the fatal disease. (Pension Office Digest.)

of any manual labor, but not so much as to require regular personal aid and attention, shall be entitled to a pension of twenty dollars per month; and for the same period all persons who under like circumstances shall have been totally and permanently disabled in one hand or one foot, or otherwise so disabled as to render their inability to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of fifteen dollars per month.

Rate and commencement of pension for permanent and specific disabilities subsequent to June 4, 1872.
Mar. 3, 1873, s. 4.
Act June 8, 1872.
See note 5.

SEC. 4698. From and after June fourth, eighteen hundred and seventy-two, all persons entitled by law to a less pension than hereinafter specified, who while in the military or naval service of the United States, and in line of duty, shall have lost the sight of both eyes, or shall have lost the sight of one eye, the sight of the other having been previously lost, or shall have lost both hands, or shall have lost both feet, or been permanently and totally disabled in the same, or otherwise so permanently and totally disabled as to render them utterly helpless, or so nearly so as to require the regular personal aid and attendance of another person, shall be entitled to a pension of thirty-one dollars and twenty-five cents per month; and all persons who, under like circumstances, shall have lost one hand and one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall be entitled to a pension of twenty-four dollars per month; and all persons who under like circumstances, shall have lost one hand, or one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of eighteen dollars per month: *Provided*, That all persons who, under like circumstances, have lost a leg above the knee, and in consequence thereof are so disabled that they cannot use artificial limbs, shall be rated in the second class and receive twenty-four dollars per month from and after June fourth, eighteen hundred and seventy-two; and all persons who, under like circumstances, shall have lost the hearing of both ears shall be entitled to a pension of thirteen dollars per month from the same date: *Provided*, That the pension for a disability not permanent, equivalent in degree to any provided for in this section, shall, during the continuance of the disability in such degree, be at the same rate as that herein provided for a permanent disability of like degree.

As to total and permanent helplessness, see act June 18, 1874, and act June 16, 1880.
For loss of hand and foot, see act Feb. 28, 1877, and Aug. 4, 1886.
For loss of both eyes, both hands, or both feet, see acts June 17, 1878, Mar. 3, 1879, and Feb. 12, 1889.
For leg amputated at hip joint, see act Mar. 3, 1879.
Mar. 3, 1873, s. 4.
Aug. 27, 1888, deafness.
Mar. 3, 1873, s. 4.

Commencement of increase for disabilities not permanent and specific.
Mar. 3, 1873, s. 4, v. 17, p. 569; Apr. 10, 1806, s. 4; June 18, 1874, ch. 298, v. 18, p. 78.

SEC. [4698½.] Except in cases of permanent specific disabilities, no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same, made under the pending claim for increase, and in this, as well as all other cases, the certificate of an examining surgeon, or of a board of examining

*Note 5.*—Amended by acts of June 18, 1874 (2); Feb. 28, 1877; June 17, 1878; Mar. 3, 1879; June 16, 1880; Mar. 3, 1883; Mar. 3, 1885; Aug. 4, 1886; Aug. 27, 1888; and Feb. 12, 1889.

surgeons, shall be subject to the approval of the Commissioner of Pensions.

See note 6.

That all soldiers, sailors, and marines who have since the sixteenth day of June, eighteen hundred and eighty, or who may hereafter become so totally and permanently helpless from injuries received or disease contracted in the service and line of duty as to require the regular personal aid and attendance of another person, or who, if otherwise entitled, were excluded from the provisions of "An act to increase pensions of certain pensioned soldiers and sailors who are utterly helpless from injuries received or disease contracted while in the United States service," approved June sixteenth, eighteen hundred and eighty, shall be entitled to receive a pension at the rate of seventy-two dollars per month from the date of the passage of this act or of the certificate of the examining surgeon or board of surgeons showing such degree of disability made subsequent to the passage of this act.

Mar. 4, 1896.

26 Stat. L., 16. Supp. R. S., 1874-91, p. 707.

Pensions, increase to totally helpless soldiers, etc.

R. S., secs. 4698, 4698½.

June 16, 1880, ch. 236,

SEC. 4699. The rate of eighteen dollars per month may be proportionally divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.

Pensions for disability not otherwise provided for.

Mar. 3, 1873, s. 5, v. 17, p. 560.

SEC. 4700. Officers absent on sick-leave, and enlisted men absent on sick-furlough, or on veteran-furlough with the organization to which they belong, shall be regarded in the administration of the pension laws in the same manner as if they were in the field or hospital.

Sick leave, sick furlough, veteran furlough, line of duty.

See note 6.

Mar. 3, 1873, s. 6; June 6, 1866, s. 8. (On veteran furlough with the organization to which they belonged. Mar. 3, 1873, s. 6.)

SEC. 4701. The period of service of all persons entitled to the benefits of the pension laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization.

Date when service terminates.

Mar. 3, 1873, s. 7; June 6, 1866, s. 9.

SEC. 4702.* If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three has died since the fourth day of March, eighteen hundred and sixty-one, or hereafter dies by reason of any wound, injury, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension had he been disabled, his widow, or if there be no widow, or in case of her death,

Widows and minors, when entitled.

Mar. 3, 1873, s. 8; July 14, 1862, s. 2; July 14, 1862, s. 11; Mar. 3, 1865, s. 4.

See act June 7, 1888.

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*Note 6.*—"Specific" disability is such as is specified in the statutes. Injuries requiring a medical examination to ascertain and declare their nature, and as to the effect of which there is room for a difference of opinion, are not specific disabilities. (Op. Atty. Genl. Devens, May 17, 1878, P. O. Digest, p. 154.)

Disability to be pensionable must be of such a character and exist to such a degree that it can be detected by the examining surgeon of the office. (P. O. Digest, p. 152.)

Disability not connected with a previous disease or injury received in service is not pensionable, even if soldier's health after discharge rendered him more liable to disease. Resulting from carelessness, disregard of regulations, etc., not pensionable, nor if shown by surgeon's certificate to have existed prior to enlistment. Cause of disability must have been contracted in the line of duty as well as in the service. (Pension Office Digest, pp. 152, 153.)

See note 7.

without payment to her of any part of the pension hereinafter mentioned, his child or children, under sixteen years of age, shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of sixteen years, and no longer; and, if the widow remarry, the child or children shall be entitled from the date of remarriage.

Increased pensions to widows, etc. Amended by act of Mar. 19, 1886.

Mar. 3, 1873, s. 9; July 25, 1866, s. 2; July 27, 1868, s. 4.

SEC. 4703. The pensions of widows shall be increased from and after the twenty-fifth day of July, eighteen hundred and sixty-six, at the rate of two dollars per month for each child under the age of sixteen years of the husband on account of whose death the claim has been, or shall be, granted. And in every case in which the deceased husband has left, or shall leave, no widow, or where his widow has died or married again, or where she has been deprived of her pension under the provisions of the pension-law, the pension granted to such child or children shall be increased to the same amount per month that would be allowed under the foregoing provisions to the widow, if living and entitled to a pension: *Provided*, That the additional pension herein granted to the widow on account of the child or children of the husband by a former wife shall be paid to her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children; for any period during which she has not been, or she shall not be, so charged, it shall be granted and paid to the guardian of such child or children: *Provided, further*, That a widow or guardian to whom increase of pension has been, or shall hereafter be, granted on account of minor children shall not be deprived thereof by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution, or in any institution organized for the care of soldiers' orphans.

July 27, 1868, s. 5.

Legitimacy of children.

Mar. 3, 1873, s. 10.

SEC. 4704. In the administration of the pension-laws, children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate.

Widows of colored and Indian soldiers entitled; evidence of marriage; legitimacy of children, etc.

Mar. 3, 1873, s. 11; July 14, 1864, s. 14; June 6, 1866, s. 14; June 15, 1866, s. 2; as to "Indian," Mar. 3, 1873, s. 11.

SEC. 4705. The widows of colored and Indian soldiers and sailors who have died, or shall hereafter die, by reason of wounds or injuries received, or casualty received, or disease contracted, in the military or naval service of the United States, and in the line of duty, shall be entitled to receive the pension provided by law without other evidence of marriage than satisfactory proof that the parties were joined in marriage by some ceremony deemed by them

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Amendment, sec. 4702.

See act approved June 7, 1888, and see act approved Feb. 19, 1887. Aug. 7, 1882, ch. 438, v. 22, p. 345.

*Note* 7.—Except when such widow has continued to draw the pension money after her remarriage, in contravention of law, and such child or children have resided with and been supported by her, their pension will commence at the date to which the widow was last paid.

obligatory, or habitually recognized each other as man and wife, and were so recognized by their neighbors, and lived together as such up to the date of enlistment, when such soldier or sailor died in the service, or, if otherwise, to date of death; and the children born of any marriage so proved shall be deemed and held to be lawful children of such soldier or sailor, but this section shall not be applicable to any claims on account of persons who enlist after the third day of March, one thousand eight hundred and seventy-three.

Mar. 3, 1873, s. 11.

Abandonment by widow of minor child or children forfeits pension. Mar. 3, 1873, s. 12; June 6, 1866, s. 11; July 27, 1868, s. 8. See act of Aug. 7, 1882.

SEC. 4706. If any person has died, or shall hereafter die, leaving a widow entitled to a pension by reason of his death, and a child or children under sixteen years of age by such widow, and it shall be duly certified under seal, by any court having probate jurisdiction, that satisfactory evidence has been produced before such court, upon due notice to the widow, that she has abandoned the care of such child or children, or that she is an unsuitable person, by reason of immoral conduct, to have the custody of the same, on presentation of satisfactory evidence thereof to the Commissioner of Pensions, no pension shall be allowed to such widow until such child or children shall have attained the age of sixteen years, any provisions of law to the contrary notwithstanding, and the said child or children shall be pensioned in the same manner, and from the same date, as if no widow had survived such person, and such pension shall be paid to the guardian of such child or children; but if in any case payment of pension shall have been made to the widow, the pension to the child or children shall commence from the date to which her pension has been paid.

Pension to minors to commence from the time the widow was paid. Mar. 3, 1873, s. 12.

Succession of dependent relatives. Mar. 3, 1873, s. 13; July 14, 1862, ss. 3, 4; June 6, 1866, s. 12; July 27, 1868, s. 1. See act approved Mar. 19, 1896.

SEC. 4707. If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three has died since the fourth day of March, eighteen hundred and sixty-one, or shall hereafter die, by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension, and has not left or shall not leave a widow or legitimate child, but has left or shall leave other relative or relatives who were dependent upon him for support in whole or in part at the date of his death, such relative or relatives shall be entitled, in the following order or precedence, to receive the same pension as such person would have been entitled to had he been totally disabled, to commence from the death of such person, namely: First, the mother; secondly, the father; thirdly, orphan brothers and sisters under sixteen years of age, who shall be pensioned jointly: *Provided*, That where orphan children of the same parent have different guardians, or a portion of them only are under guardianship, the share of the joint pension to which each ward shall be entitled shall be paid to the guardian of such ward: *Provided*, That if in any case said person shall have left father and mother who are dependent upon him, then, on the death of the mother, the father shall become entitled to the pension,

commencing from and after the death of the mother; and upon the death of the mother and father, or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under sixteen years of age shall jointly become entitled to such pension until they attain the age of sixteen years, respectively, commencing from the death or remarriage of the party who had the prior right to the pension: *Provided*, That a mother shall be assumed to have been dependent upon her son within the meaning of this section if, at the date of his death, she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of said son or of any other persons not legally bound to aid in her support; and if, by actual contributions, or in any other way, the son had recognized his obligations to aid in support of his mother, or was by law bound to such support, and that a father or a minor brother or sister shall, in like manner and under like conditions, be assumed to have been dependent, except that the income which was derived or derivable from his actual or possible manual labor shall be taken into account in estimating a father's means of independent support: *Provided, further*, That the pension allowed to any person on account of his or her dependence, as hereinbefore provided, shall not be paid for any period during which it shall not be necessary as a means of adequate subsistence.

Remarriage.
Mar. 3, 1873, s. 14; July 14, 1862, ss. 2, 3; July 4, 1864, s. 7; July 25, 1866, s. 6; July 27, 1868, s. 10.

SEC. 4708. The remarriage of any widow, dependent mother, or dependent sister, entitled to pension, shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any widow, dependent mother, or dependent sister, having a pension, such pension shall cease.*

Arrears of pensions.
Mar. 3, 1873, s. 17.
Mar. 1, 1889.
See s. 4718, same title.

SEC. 4711. It shall be the duty of the Commissioner of Pensions, upon any application by letter or otherwise by or on behalf of any pensioner entitled to arrears of pension under section forty-seven hundred and nine, or if any such pensioner has died, upon a similar application by or on behalf of any person entitled to receive the accrued pension due such pensioner at his death, to pay or cause to be paid to such pensioner, or other person, all such arrears of pension as the pensioner may be entitled to, or, if dead, would have been entitled to under the provisions of that section had he survived; and no claim-agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension.

No fee due attorney for making application for arrears.

Provisions of former acts extended.
Mar. 3, 1873, s. 18. Amended by act of June 9, 1880.
July 25, 1866, s. 3; July 27, 1868, s. 13. See amendment act June 9, 1880.

SEC. 4712. The provisions of this Title in respect to the rates of pension to persons whose right accrued since the fourth day of March, eighteen hundred and sixty-one, are extended to pensioners whose right to pension accrued under general acts passed since the war of the Revolution and prior to the fourth day of March, eighteen hundred and sixty-one, to take effect from and after the twenty-fifth day of July, eighteen hundred and sixty-six; and the widows of

* Section 4709 was repealed by acts of January 25 and March 3, 1879, and section 4710 by acts of January 25 and March 3, 1879.

revolutionary soldiers and sailors receiving a less sum shall be paid at the rate of eight dollars per month from and after the twenty-seventh day of July, eighteen hundred and sixty-eight.

Mar. 3, 1879.

Arrears of pensions.

Mar. 3, 1879, ch. 187, s. 1, v. 20, p. 469.

That the rate at which the arrears of invalid pensions shall be allowed and computed in the cases which have been or shall hereafter be allowed shall be graded according to the degree of the pensioner's disability from time to time and the provisions of the pension laws in force over the period for which the arrears shall be computed.

That section one of the act of January twenty-fifth, eighteen hundred and seventy-nine, granting arrears of pensions shall be construed to extend to and include pensions on account of soldiers who were enlisted or drafted for the service in the war of the rebellion, but died or incurred disability from a cause originating after the cessation of hostilities; and before being mustered out: *Provided*, That in no case shall arrears of pensions be allowed and paid from a time prior to the date of actual disability.

See note 8. Ibid., s. 2.

All pensions which have been, or which may hereafter be, granted in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, or in consequence of wounds or injuries received or disease contracted since that date shall commence from the death or discharge of the person on whose account the claim has been or is hereafter granted if the disability occurred prior to discharge, and if such disability occurred after the discharge then from the date of actual disability or from the termination of the right of party having prior title to such pension: *Provided*, The application for such pension has been or is hereafter filed with the Commissioner of Pensions prior to the first day of July eighteen hundred and eighty, otherwise the pension shall commence from the date of filing the application; but the limitation herein prescribed shall not apply to claims by or in behalf of insane persons and children under sixteen years of age.

Pensions, war of 1812.

An act approved March 9, 1878, chap. 28, vol. 20, p. 97, authorizes the names of the surviving officers and men, including militia and volunteers, who served fourteen days in the war with Great Britain of 1812, or who were in any engagement and were honorably discharged, and the surviving widows of such, to be placed on the pension rolls. It also restores pensions to such of them as had been stricken from the rolls for engaging in the rebellion or encouraging it; no arrearages to be paid.

Pensions under special and general acts.

The fifth section of the act approved July 25, 1882, chap. 349, v. 22, p. 176, provides "that no person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law.

*Note 8.*—Date of actual discharge is the date to which paid. (Pension Office Digest, p. 154.)

Pension for loss of sight of both eyes.

An act approved March 3, 1879, chap. 200, v. 20, p. 484, provides that the act of June 17, 1878, increasing the pensions of soldiers and sailors who have lost both their hands, or both their feet, or the sight of both eyes in the service of the country, shall be so constructed as to include all soldiers and sailors who have become totally blind from causes occurring in the service of the United States.

Jan. 25, 1879.

Commencement of pensions.

Jan. 25, 1879, ch. 23, s. 1, v. 20, p. 265.

That all pensions which have been granted under the general laws regulating pensions, or may hereafter be granted, in consequence of death from a cause which originated in the United States service during the continuance of the late war of the rebellion, or in consequence of wounds, injuries, or disease received or contracted in said service during said war of the rebellion, shall commence from the date of the death or discharge from said service of the person on whose account the claim has been or shall hereafter be granted, or from the termination of the right of the party having prior title to such pension: *Provided*, The rate of pension for the intervening time for which arrears of pension are hereby granted shall be the same per month for which the pension was originally granted.

Commencement of ante-rebellion pensions.

Mar. 3, 1873, s. 19; June 6, 1866, s. 13; July 25, 1866, s. 3; Feb. 21, 1795, s. 1; May 20, 1820, s. 2; Feb. 4, 1822, s. 2; May 24, 1828, s. 2.

SEC. 4713. In all cases in which the cause of disability or death originated in the service prior to the fourth day of March, eighteen hundred and sixty-one, and an application for pension shall not have been filed within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing by the party prosecuting the claim the last paper requisite to establish the same. But no claim allowed prior to the sixth day of June, eighteen hundred and sixty-six, shall be affected by anything herein contained.

July 26, 1892.

Declarations and other papers in pension claims, before whom executed.

This act supersedes sec. 4714, R. S.

That declarations of pension claimants shall be made before a court of record, or before some officer thereof having custody of its seal, or before some officer who, under the laws of his state, city, or county, has authority to administer oaths for general purposes; and said officers are hereby fully authorized and empowered to administer and certify any oath or affirmation relating to any pension or application therefor:

Officers not required to use a seal to file a certificate of official character.

*Provided*, That where such declarations or other papers are executed before an officer authorized as above but not required by the laws of his state to have and use a seal to authenticate his official acts, he shall file in the Pension Bureau a certificate of his official character, showing his official signature and term of office, certified by a clerk of a court of record or other proper officer of the State as to the genuineness thereof; and when said certificate has been filed in the Bureau of Pensions his own certificate will be recognized during his term of office.

Pension papers executed in foreign countries.

SEC. 2. That the Commissioner of Pensions may accept declarations and other papers of claimants residing in foreign countries made before a United States minister or consul or other consular officer, or before some officer of the

country duly authorized to administer oaths for general purposes, and whose official character and signature shall be duly authenticated by the certificate of a United States minister or consul or other consular officer;

And declarations in claims of Indians may be made before a United States Indian agent.

Declarations in claims of Indians.

SEC. 3. That any and all declarations or affidavits now on file in the Pension Bureau which are considered informal by reason of not having been executed in conformity to the laws heretofore in force covering such, and in which it is shown or may be hereafter shown by proper evidence that the same were executed by and before an officer who was duly authorized to administer oaths for general purposes at said date of execution, shall be accepted as formal as from date of filing such declarations or affidavits.

Declarations and affidavits executed under former acts made good.

SEC. 4. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Repeal.

SEC. 4715. Nothing in this Title shall be so construed as to allow more than one pension at the same time to the same person or to persons entitled jointly; but any pensioner who shall so elect may surrender his certificate, and receive, in lieu thereof, a certificate for any other pension to which he would have been entitled had not the surrendered certificate been issued. But all payments previously made for any period covered by the new certificate shall be deducted from the amount allowed by such certificate.

Two pensions not allowable.
Mar. 3, 1873, s. 2; July 14, 1862, ss. 3, 4, 10; June 6, 1866, s. 13; July 25, 1866, s. 2.
See act of July 25, 1882, s. 5.

SEC. 4716. No money on account of pension shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States.

Loyalty requisite.
Mar. 3, 1873, s. 23; July 14, 1862, s. 4.
See act Feb. 4, 1862, and joint resolution Mar. 2, 1867.
For act of Jan. 25, 1879, see p. —. This act repeals sec. 4717.

SEC. 4718. If any pensioner has died or shall hereafter die, or if any person entitled to a pension, having an application therefor pending, has died or shall hereafter die, his widow, or if there is no widow, the child or children of such person under the age of sixteen years shall be entitled to receive the accrued pension to the date of the death of such person. Such accrued pension shall not be considered as a part of the assets of the estate of deceased, nor liable to be applied to the payment of the debts of said estate in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children; and if no widow or child survive, no payment whatsoever of the accrued pension shall be made or allowed, except so much as may be necessary to reimburse the person who bore the expenses of the last sickness and burial of the decedent, in cases where he did not leave sufficient assets to meet such expenses.

Accrued pension; title to, vested first in widow, second in minor child or children.
Mar. 3, 1873, s. 25; July 4, 1864, s. 10; June 6, 1866, s. 6; July 25, 1866, s. 4; July 27, 1868, s. 9; Mar. 2, 1829, s. 2; June 19, 1840, ss. 1, 2, 3.
Also, see note to each of the two last-named acts in Mayo and Moulton.
Reimbursement.
See act of Mar. 1, 1889.

SEC. 4719. The failure of any pensioner to claim his pension for three years after the same shall have become due shall be deemed presumptive evidence that such pension has legally terminated by reason of the pensioner's death, remarriage, recovery from the disability, or otherwise, and the pensioner's name shall be stricken from the list of pen-

Unclaimed pensions; disposition of.
Mar. 3, 1873, s. 26; July 27, 1868, s. 3; Apr. 6, 1838, s. 1; Aug. 29, 1842, s. 3.

sioners, subject to the right of restoration to the same on a new application by the pensioner, or, if the pensioner is dead, by the widow or minor children entitled to receive the accrued pension, accompanied by evidence satisfactorily accounting for the failure to claim such pension, and by medical evidence in cases of invalids who were not exempt from biennial examinations as to the continuance of the disability.

Pensions under special acts. Mar. 3, 1873, s. 27; July 27, 1868, s. 15; July 7, 1870, s. 1. See amendment act June 6, 1874. Amended by act of June 6, 1874, and s. 5, act of July 25, 1882.

SEC. 4720. When the rate, commencement, and duration of a pension allowed by special act are fixed by such act, they shall not be subject to be varied by the provisions and limitations of the general pension law; but when not thus fixed, the rate and continuance of the pension shall be subject to variation in accordance with the general laws, and its commencement shall date from the passage of the special act, and the Commissioner of Pensions shall, upon satisfactory evidence that fraud was perpetrated in obtaining such special act, suspend payment thereupon until the propriety of repealing the same can be considered by Congress.

Both pension and pay not allowed, unless, etc. See note 9. Apr. 30, 1844, v. 5, p. 657; Aug. 16, 1841, s. 2, v. 5, p. 440. General service. Act Apr. 30, 1844. As to persons in the civil service of the United States, see Mar. 3, 1865, s. 1; June 6, 1866, s. 5, and act of Mar. 1, 1879.

SEC. 4724. No person in the Army, Navy, or Marine Corps shall draw both a pension as an invalid, and the pay of his rank or station in the service, unless the disability for which the pension was granted be such as to occasion his employment in a lower grade, or in the civil branch of the service.

Pension to officers and seamen of the Navy disabled prior to Mar. 4, 1861. Aug. 11, 1848, ss. 2, 3, v. 9, p. 283; July 1, 1791, s. 11; Apr. 23, 1800, s. 8.

SEC. 4728. If any officer, warrant or petty officer, seaman, engineer, first, second, or third assistant engineer, fireman or coal heaver of the Navy or any marine has been disabled prior to the fourth day of March eighteen hundred and sixty-one by reason of any injury received or disease contracted in the service and line of duty, he shall be entitled to receive during the continuance of his disability a pension proportionate to the degree of his disability not exceeding half the monthly pay of his rank as it existed in January eighteen hundred and thirty-five. But the pension of a chief-engineer shall be the same as that of a lieutenant of the Navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; the pension of a second or third assistant engineer the same as that of a forward officer; the pension of a fireman or coal-heaver the same as that of a seaman; but an engineer, fireman or coal-heaver shall not be entitled to any pension by reason of a disability incurred prior to the thirty-first day of August eighteen hundred and forty-two.

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*Note 9.*—The object of the proviso in the act of 1844 (sec. 4724, R. S.) was to prohibit the payment to any one serving in the Army, Navy, or Marine Corps of *both* pay and pension, except where the disability for which the pension is allowed is such as to have occasioned his employment in a lower grade or some civil branch of the service. (Op., XIV, p. 94, Aug. 8, 1872, Williams. See also IV, p. 587; V, p. 51; VI, p. 718.)

SEC. 4729. If any person referred to in the preceding section has died in the service, or injury received or disease contracted under the conditions therein stated, his widow shall be entitled to receive half the monthly pay to which the deceased was entitled at the date of his death; and in case of her death or marriage, the child or children under sixteen years of age shall be entitled to the pension. But the rate of pension herein allowed shall be governed by the pay of the Navy as it existed in January, eighteen hundred and thirty-five; and the pension of the widow of a chief engineer shall be the same as that of a widow of a lieutenant in the Navy; the pension of the widow of a first assistant engineer shall be the same as that of the widow of a lieutenant of marines; the pension of the widow of a second or third assistant engineer the same as that of the widow of a forward officer; the pension of the widow of a fireman or coal-heaver shall be the same as that of the widow of a seaman. But the rate of pension prescribed by this and the preceding section shall be varied from and after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section four thousand seven hundred and twelve of this Title; and the widow of an engineer, fireman, or coal-heaver shall not be entitled to any pension by reason of the death of her husband if his death was prior to the thirty-first day of August, eighteen hundred and forty-two.

Naval pensions to widows and children.
Aug. 11, 1848, ss. 1, 2, 3, v. 9, p. 283.

See Mar. 3, 1877, following.

Mar. 3, 1877.

That from and after the passage of this act, the pension for total disability of passed assistant engineers, assistant engineers, and cadet engineers in the naval service, respectively, shall be the same as the pensions allowed to officers of the line in the naval service with whom they have relative rank; and that all acts or parts of acts inconsistent herewith be, and are hereby, repealed.

Supp. R. S., p. 148.
19 Stat. L., 403.
Pensions to engineers in Navy to be according to relative rank.
R. S., sec. 4728.
Feb. 24, 1874, ch. 35, s. 1.
See note 10.

*Rates fixed by Pension Office for certain disabilities not specified by law.*

Pension Office Digest of Laws, 1881, p. 232.

| | |
|---|---|
| Loss of an eye | one-half. |
| Loss of a thumb | one-half. |
| Loss of an index finger | three-eighths. |
| Loss of a finger | one-fourth. |
| Loss of a toe | one-fourth. |
| Loss of a great toe | one-half. |
| Inguinal hernia | one-half. |
| Double inguinal hernia | three-fourths. |
| Anchylosis of elbow joint | total. |

RATES FIXED BY LAW FOR TOTAL DISABILITY.

*Navy and Marine Corps.*

| | Month. |
|---|---|
| Captain and all officers of higher rank; commander; lieutenant commanding and master commanding; surgeon, paymaster and chief engineer ranking with commander by law; lieutenant-colonel and all of higher rank in the Marine Corps | $30 |
| Lieutenant, passed assistant surgeon, surgeon, paymaster and chief engineer ranking with lieutenant by law, and major in Marine Corps | 25 |

Pension Office Digest of Laws, 1881, p. 231.
See note 11.

*Note 10.*—Grade of "cadet engineer" abolished and "naval cadet" substituted by Act of Aug. 5, 1882, ch. 391, par. 1.

*Note 11.*—The matter in heavy-faced type has been inserted in the foregoing table to meet recent legislation.

| | Month. |
|---|---|
| Master, professor of mathematics, assistant surgeon, paymaster and chaplain, and captain in the Marine Corps | $20 |
| First lieutenant in the Marine Corps | 17 |
| First assistant engineer, ensign and pilot, and second lieutenant in the Marine Corps | 15 |
| Cadet midshipman, passed midshipman, midshipman, clerks of admirals, paymasters, and of officers commanding vessels, second and third assistant engineers, masters, mates and warrant officers | 10 |
| All enlisted men except warrant officers | 8 |

| Rates and disabilities specified by law. See note 10. | From July 4, 1864. | From March 3, 1865. | From June 6, 1866. | From June 4, 1872. | From June 4, 1874. | From February 28, 1877. | From June 17, 1878. | From March 3, 1879. | Act of June 16, 1880. | From March 3, 1883. |
|---|---|---|---|---|---|---|---|---|---|---|
| Loss of both hands | $25 00 | | | $31 25 | $50 00 | | $72 00 | | Extends the provisions of act of June 17, 1878. | |
| Loss of both feet | 20 00 | | | 31 25 | 50 00 | | 72 00 | | | |
| Loss of both eyes | 25 00 | | | 31 25 | 50 00 | | 72 00 | | | |
| Loss of an eye, the sight of the other previously lost | | | $25 00 | 31 25 | 50 00 | | 72 00 | | | |
| Loss of 1 hand and 1 foot | | $20 00 | | 24 00 | | $36 00 | | | | |
| Total disability in 1 hand and 1 foot | | | 20 00 | 24 00 | | 36 00 | | | | |
| Loss of a hand or a foot | | | 15 00 | 18 00 | | | | | | $24 00 |
| Totally or permanently disabled in same | | | | | | | | | | 24 00 |
| Amputation at or above elbow or knee | | | 15 00 | 18 00 | 24 00 | | | | | 30 00 |
| Amputation at hip-joint | | | 15 00 | 18 00 | 24 00 | | | $37 50 | | |
| Inability to perform manual labor | | | 20 00 | 24 00 | | | | | | |
| Ditto—equal to loss of hand or foot | | | | | | | | | | 24 00 |
| Regular aid and attendance | | | 25 00 | 31 25 | 50 00 | | | | | |
| Total disability in both hands | | | 25 00 | 31 25 | 50 00 | | | | | |

Pensions are not to be withheld. Act May 20, 1836.

SEC. 4734. The provisions of law which allow the withholding of the compensation of any person who is in arrears shall not be construed to authorize the pension of any pensioner of the United States to be withheld.

Time for which a widow shall not receive a pension. Act Apr. 30, 1844. See resolution Jan. 23, 1845.

SEC. 4735. No pension shall be granted to a widow for the same time that her husband received one.

Pensions to certain soldiers and sailors of the war of 1812. Feb. 14, 1871, s. 1. See act Mar. 9, 1878.

SEC. 4736. The Secretary of the Interior is directed to place on the pension-roll the names of the surviving officers and enlisted and drafted men, including militia and volunteers, of the military and naval service of the United States, who served sixty days in the war with Great Britain, of eighteen hundred and twelve, and were honorably discharged, and such other officers and soldiers as may have been personally named in any resolution of Congress for any specific service in that war, although their term of service may have been less than sixty days, subject, however, to the provisions of section forty-seven hundred and sixteen.

Pensions under preceding section; rate of. Feb. 14, 1871, s. 2. See act Mar. 9, 1878.

SEC. 4737. Pensions, under the preceding section, shall be at the rate of eight dollars per month, and shall be paid to the persons entitled thereto for the term of their lives from and after the fourteenth day of February, eighteen hundred and seventy-one. But that section shall not apply to any person who is receiving a pension at the rate of eight

dollars or more per month; nor to any person who is receiving a pension less than eight dollars per month, except for the difference between the pension now received and eight dollars per month.

Pensions to surviving widows of officers, etc., of the war of 1812. Feb. 14, 1871, s. 1. See act Mar. 9, 1878, s. 6.

SEC. 4738. The surviving widows of such persons as are embraced within the provisions of the two preceding sections shall be allowed, on the conditions and limitations therein expressed, the same pension that such persons themselves would have been entitled to receive thereunder if living on the fourteenth day of February, eighteen hundred and seventy-one: *Provided, however*, Such widows were married to the husbands, on account of whose services the pension is claimed, prior to the treaty of peace which terminated the war of eighteen hundred and twelve, and have not remarried.

Proof required; names may be stricken from pension rolls. Feb. 14, 1871, s. 3. See act Mar. 9, 1878.

SEC. 4739. Before the name of any person is placed upon the pension-roll under the three preceding sections, proof shall be made, under such regulations as the Secretary of the Interior may prescribe, that the applicant is entitled to a pension under the provisions of the sections herein cited; and the Secretary of the Interior shall cause to be stricken from the pension-roll the name of any person whenever it appears, by proof satisfactory, that such name was put upon such roll through false or fraudulent representations.

Loss of discharge certificate. Feb. 14, 1871, s. 3. See act Mar. 9, 1878.

SEC. 4740. The loss of a certificate of discharge shall not deprive an applicant of the benefits of sections forty-seven hundred and thirty-six, forty-seven hundred and thirty-seven, and forty-seven hundred and thirty-eight, but other proof of services performed and of an honorable discharge, if deemed satisfactory, shall be sufficient.

Pension to officers and seamen of revenue cutters. Act Apr. 18, 1814.

SEC. 4741. The officers and seamen of the revenue cutters of the United States, who have been or may be wounded or disabled in the discharge of their duty while co-operating with the Navy by order of the President, shall be entitled to be placed on the Navy pension-list, at the same rate of pension and under the same regulations and restrictions as are provided by law for the officers and seamen of the Navy.

Certain claims for Revolutionary pensions prohibited. Act Apr. 2, 1862.

SEC. 4742. From and after the second day of April, eighteen hundred and sixty-two, no claim for a pension, or for an increase of pension, shall be allowed in favor of the children or other descendants of any person who served in the war of the Revolution, or of the widow of such person, when such person or his widow died without having established a claim to a pension.

Evidence necessary to enable widows of Revolutionary soldiers to obtain pensions. Resolution July 1, 1848.

SEC. 4743. In all cases where a pension has been granted to any officer or soldier of the Revolution in his life-time, the evidence upon which such pension was granted shall be conclusive of the service of such officer or soldier in the application of any widow, or woman who may have been the widow, of such officer or soldier, for a pension; and upon proof by her that she was married to any such officer or soldier and that she is a widow, she shall thereupon be placed upon the pension-rolls at the same rate that such officer or soldier received during his life-time.

Any pledge, mortgage, sale, assignment, or transfer of pension void.
Mar. 3, 1873, s. 32; Apr. 10, 1806, s. 8; Mar. 18, 1818, s. 4; July 7, 1838, s. 2; June 6, 1866, s. 2.
Amended by sec. 2, act of Feb. 28, 1883.

SEC. 4745. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension which has been, or may hereafter be, granted, shall be void and of no effect; and any person acting as attorney to receive and receipt for money for and in behalf of any person entitled to a pension shall, before receiving such money, take and subscribe an oath, to be filed with the pension agent, and by him to be transmitted, with the vouchers now required by law, to the proper accounting officer of the Treasury, that he has no interest in such money by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person.

Pension not liable to attachment.
Mar. 3, 1873, s. 25; June 6, 1866, s. 3; July 7, 1838, s. 2.

SEC. 4747. No sum of money due, or to become due, to any pensioner shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.

Commissioner of Pensions shall furnish printed instructions free of charge.
Mar. 3, 1873, s. 22; July 14, 1862, s. 9.
See sec. 4768.

SEC. 4748. That the Commissioner of Pensions, on application being made to him in person, or by letter, by any claimant or applicant for pension, bounty-land, or other allowance required by law to be adjusted or paid by the Pension Office, shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing and obtaining said claim; and on the issuing of a certificate of pension or of a bounty-land warrant, he shall forthwith notify the claimant or applicant, and also the agent or attorney in the case, if there be one, that such certificate has been issued, or allowance made, and the date and amount thereof.

Certain soldiers and sailors not to be deemed deserters.
Act July 19, 1867.
See act Aug. 7, 1882, and act July 5, 1884, and also act May 17, 1886.

SEC. 4749. No soldier or sailor shall be taken or held to be a deserter from the Army or Navy who faithfully served according to his enlistment until the nineteenth day of April, eighteen hundred and sixty-five, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date; but nothing herein contained shall operate as a remission of any forfeiture incurred by any such soldier or sailor of his pension; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred by the loss of his citizenship in consequence of his desertion.

## PENSION FUNDS.

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Secretary of Navy trustee. July 10, 1832, s. 1, v. 4, p. 572.

SEC. 4750. The Secretary of the Navy shall be trustee of the Navy pension-fund.

Penalties, how to be sued for, etc. Mar. 2, 1831, s. 3, v. 4, p. 472.

SEC. 4751. All penalties and forfeitures incurred under the provisions of sections twenty-four hundred and sixty-one, twenty-four hundred and sixty-two, and twenty-four hundred and sixty-three, Title "THE PUBLIC LANDS," shall be sued for, recovered, distributed, and accounted for, under the directions of the Secretary of the Navy, and shall be paid over, one-half to the informers, if any, or captors, where seized, and the other half to the Secretary of the Navy for the use of the Navy pension-fund; and the Secretary is authorized to mitigate, in whole or in part, on such terms and conditions as he deems proper, by an order in writing, any fine, penalty, or forfeiture so incurred.

Prize money accruing to the United States to remain a fund for pensions. July 17, 1862, s. 11, v. 12, p. 607. See sec. 4630, under prize.

SEC. 4752. All money accruing or which has already accrued to the United States from sale of prizes shall be and remain forever a fund for the payment of pensions to the officers, seamen, and marines who may be entitled to receive the same; and if such fund be insufficient for the purpose, the public faith is pledged to make up the deficiency; but if it should be more than sufficient the surplus shall be applied to the making of further provision for the comfort of the disabled officers, seamen, and marines.

Naval pension fund, how to be invested. July 1, 1864, res. 62, v. 13, p. 424.

SEC. 4753. The Secretary of the Navy, as trustee of the naval pension-fund, is directed to cause to be invested in the registered securities of the United States, on the first day of January and the first day of July of each year, so much of such fund then in the Treasury of the United States as may not be required for the payment of naval pensions for the then current fiscal year; and upon the requisition of the Secretary, so much of the fund as may not be required for such payment of pensions accruing during the current fiscal year shall be held in the Treasury on the days above named in each year, subject to his order, for the purpose of

such immediate investment; and the interest payable in coin upon the securities in which the fund may be invested, shall be so paid, when due, to the order of the Secretary of the Navy, and he is authorized and directed to exchange the amount of such interest when paid in coin, for so much of the legal currency of the United States as may be obtained therefor at the current rates of premium on gold, and to deposit the interest so converted in the Treasury to the credit of the naval pension-fund; but nothing herein contained shall be construed to interfere with the payment of naval pensions under the supervision of the Secretary of the Interior, as regulated by law.

Rate of interest on naval pension fund.
July 23, 1868, s. 2, v. 15, p. 170.

SEC. 4754. The interest on the naval pension-fund shall hereafter be at the rate of three per centum per annum in lawful money.

Navy pensions payable from fund.
July 11, 1870, v. 16, p. 222; July 23, 1868, s. 2, v. 15, p. 170; Jan. 19, 1877, v. 19, p. 224.

SEC. 4755. The Navy pensions shall be paid from the Navy pension-fund, but no payments shall be made therefrom except upon appropriations authorized by Congress.

Half rating to disabled enlisted persons serving twenty years in Navy or Marine Corps.
Mar. 2, 1867, s. 6, v. 14, p. 516; Dec. 23, 1886.

SEC. 4756. There shall be paid out of the naval pension-fund to every person, who, from age or infirmity, is disabled from sea-service, but who has served as an enlisted person in the Navy or Marine Corps for the period of twenty years, and not been discharged for misconduct, in lieu of being provided with a home in the Naval Asylum, Philadelphia, if he so elects, a sum equal to one-half the pay of his rating at the time he was discharged, to be paid to him quarterly, under the direction of the Commissioner of Pensions; and applications for such pension shall be made to the Secretary of the Navy, who, upon being satisfied that the applicant comes within the provisions of this section, shall certify the same to the Commissioner of Pensions, and such certificate shall be his warrant for making payment as herein authorized.

Serving not less than ten years may receive what aid.
Ibid.
Dec. 23, 1886.
See note 1.

SEC. 4757. Every disabled person who has served in the Navy or Marine Corps as an enlisted man for a period not less than ten years, and not been discharged for misconduct, may apply to the Secretary of the Navy for aid from the surplus income of the naval pension-fund; and the Secretary of the Navy is authorized to convene a board of not less than three naval officers, one of whom shall be a surgeon, to examine into the condition of the applicant, and to recommend a suitable amount for his relief, and for a specified time, and upon the approval of such recommendation by the Secretary of the Navy, and certificate thereof to the Commissioner of Pensions, the amount shall be paid in the same manner as is provided in the preceding section for the payment to persons disabled by long service in the

*Note 1.*—Pensions granted under sections 4756 and 4757 are wholly under control of the Secretary of the Navy, to whom applications should be made. The Pension Office also requires that claimants shall file an application, properly executed before a court of record, as an identification of the party whose claim has been adjudicated by the Navy Department.

The rule now in force regarding these pensions, is that they will be considered as commencing on the date of filing the application in the Navy Department. (See Pension Office Digest, p. 191.)

Navy; but no allowance so made shall exceed the rate of a pension for full disability corresponding to the grade of the applicant, nor, if in addition to a pension, exceed one-fourth the rate of such pension.

Dec. 23, 1886.

That section forty-seven hundred and fifty-six and section forty-seven hundred and fifty-seven of the Revised Statutes of the United States be, and the same are hereby, amended by inserting the words "or as an appointed petty officer, or both," after the words "as an enlisted person" in the former section, and after the words "as an enlisted man" in the latter section.

24 Stat. L., 353. Supp. R. S., 1874-91, p. 517.

Petty officers of navy to receive same pension as enlisted men.

R. S., secs. 4756, 4757.

SEC. 4758. The Secretary of the Navy shall be trustee of the privateer pension-fund.

Secretary of Navy trustee.

July 10, 1832, s. 1, v. 4, p. 572.

SEC. 4759. Two per centum on the net amount, after deducting all charges and expenditures, of the prize-money arising from captured vessels and cargoes, and on the net amount of the salvage of vessels and cargoes recaptured by the private armed vessels of the United States, shall be secured and paid over to the collector or other chief officer of the customs at the port or place in the United States at which such captured or recaptured vessels may arrive; or to the consul or other public agent of the United States residing at the port or place, not within the United States, at which such captured or recaptured vessels may arrive. And the moneys arising therefrom are pledged by the Government of the United States as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled on board of the private armed vessels of the United States, in any engagement with the enemy, to be assigned and distributed in such manner as is or may be provided by law.

Privateer pension fund, how derived.

June 26, 1812, s. 17, v. 2, p. 763.

SEC. 4760. The two per centum reserved in the hands of the collectors and consuls by the preceding section, shall be paid to the Treasury, under the like regulations provided for other public money, and shall constitute a fund for the purposes provided for by that section.

To be paid into the Treasury, etc.

Feb. 13, 1813, s. 1, v. 2, p. 799.

SEC. 4761. The Secretary of the Interior is required to place on the pension-list, under the like regulations and restrictions as are used in relation to the Navy of the United States, any officer, seamen, or marine, who, on board of any private armed vessel bearing a commission of letter of marque, shall have been wounded or otherwise disabled in any engagement with the enemy, or in the line of their duty as officers, seamen, or marines of such private armed vessel; allowing to the captain a sum not exceeding twenty dollars per month; to lieutenants and sailing-master a sum not exceeding twelve dollars each per month; to marine officer, boatswain, gunner, carpenter, master's mate, and prize-masters, a sum not exceeding ten dollars each per month; to all other officers a sum not exceeding eight dollars each per month, for the highest rate of disability, and so in proportion; and to a seaman, or acting as a marine, the sum of six dollars per month, for the high-

Wounded, etc., privateersmen to be placed on pension list.

Feb. 13, 1813, s. 2, v. 2, p. 799; Aug. 2, 1813, v. 3, p. 86.

est rate of disability, and so in proportion; which several pensions shall be paid from moneys appropriated for the payment of pensions.

Commanding officers of privateers to enter names, etc., in a journal.
Feb. 13, 1813, s. 3, v. 2, p. 800.

SEC. 4762. The commanding officer of every vessel having a commission, or letters of marque and reprisal, shall enter in his journal the name and rank of any officer, and the name of any seaman, who, during his cruise, is wounded or disabled, describing the manner and extent, as far as practicable, of such wound or disability.

Transcript of journals to be transmitted to Secretary of the Navy.
Ibid., s. 4.

SEC. 4763. Every collector shall transmit quarterly to the Secretary of the Navy a transcript of such journals as may have been reported to him, so far as it gives a list of the officers and crew, and the description of wounds and disabilities, the better to enable the Secretary to decide on claims for pensions.

Pensions to be paid only to persons entitled.
July 8, 1870, s. 3.
See note 2.

SEC. 4766. Hereafter no pension shall be paid to any person other than the pensioner entitled thereto, nor otherwise than according to the provisions of this Title, and no warrant, power of attorney, or other paper executed or purporting to be executed by any pensioner to any attorney, claim-agent, broker, or other person shall be recognized by any agent for the payment of pensions, nor shall any pension be paid thereon; but the payment to persons laboring under legal disabilities may be made to the guardians of such persons in the manner herein prescribed; and pensions payable to persons in foreign countries may be made according to the provisions of existing laws.

Making or presenting false claims.
Mar. 2, 1863, ch. 67, ss. 1, 3, v. 12, pp. 696, 698.
See secs. 3490, 3491.

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any Department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any Department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or

*Note 2.*—Amended by act of August 8, 1882. See section 2, act of February 26, 1881, act of August 7, 1882, and section 4, act of March 3, 1883, for manner of payment of pensions to inmates of National Home for Disabled Volunteer Soldiers.

other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

May 21, 1872.

Penalty upon claim agents, etc., for retaining without consent or refusing to deliver discharge papers or land warrants of any soldier, etc.

That any claim agent, attorney, or other person engaged in the collection of claims for pay, bounty, pension, or other allowances for any soldier, sailor, or marine, or for any commissioned officer of the military or naval forces, or who may have been a soldier, sailor, marine, or officer of the regular volunteer forces of the United States, and honorably discharged, who shall retain, without the consent of the owner or owners thereof, or shall refuse to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers or land warrant of any such soldier, sailor, or marine, or commissioned officer which may have been placed in his hands for the purpose of collecting said claims, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or both, in the discretion of the court, and shall thereafter be debarred from prosecuting any such claim in any executive department of the Government.

Embezzlement of pension money by guardian.

Ibid.

Amended by act Feb. 10, 1891.

SEC. 5486. If any guardian, having the charge and custody of the pension of his ward, shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, he shall be punished by a fine not exceeding two thousand dollars or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court.

United States officer accepting bribe.

Feb. 26, 1853; Mar. 3, 1863; July 13, 1866; July 18, 1866; Mar. 3, 1875.

SEC. 5501. Every officer of the United States, and every person acting for or on behalf of the United States in any official capacity, under or by virtue of the authority of any Department or officer of the Government thereof, and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House or of both houses thereof, who asks, accepts, or receives any money or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may, at any time, be pending, or which may be by law brought before him in his official capacity,

or in his place of trust or profit, influenced thereby shall be punished as prescribed in the preceding section.

Bribery of any United States officer. Mar. 3, 1863; July 13, 1866; July, 18, 1886. See sec. 5501.

SEC. 5451. Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any Department or officer of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or any committee of either House or both houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

SEC. 1782. No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

Trusses. See sec. 1176. Artificial Limbs and Trusses.

SEC. 1176. Every soldier of the Union Army who was ruptured while in the line of duty during the war for the suppression of the rebellion, is entitled to receive a single or double truss, of such style as may be designated by the Surgeon-General, as best suited for his disability.

Application for truss. See same sec., "Artificial limbs."

SEC. 1177. Application for such truss shall be made by the ruptured soldier to an examining surgeon for pensions, whose duty it shall be to examine the applicant, and when found to have a ruptured hernia to prepare and forward to the Surgeon-General an application for such truss without charge to the soldier.

## PENSION LAWS NOW IN FORCE.

Act.
June 6, 1874. Special-act pensions equalized.
June 18, 1874. Increasing pensions of totally disabled soldiers and sailors.
June 18, 1874. Loss of arm at or above elbow; leg at or above knee.
Aug. 15, 1876. Artificial limbs to disabled soldiers and seamen and transportation.
Feb. 27, 1877. Officers and men who have lost limbs, etc., certain benefits for.
Feb. 28, 1877. Lost one hand or one foot, or totally disabled in both—$36 per month.
Mar. 3, 1877. Equalizing pensions of certain officers in the Navy.
Mar. 3, 1877. Removal of disability in certain cases.
June 17, 1878. Increasing pensions to $72 per month for loss of both hands or both feet, or sight of both eyes.
Jan. 25, 1879. Pensions shall commence from date of the death or discharge from the service.
Mar. 3, 1879. Loss of both hands, both feet, sight of both eyes.
Mar. 3, 1879. Amputation of leg at hip joint.
June 16, 1880. Totally disabled.
Feb. 26, 1881. Regulating payment of pensions to inmates of National Soldiers' Home.
Aug. 7, 1882. Payment of pension to National Home, when.
Feb. 28, 1883. Any pledge or transfer of pension void.
Mar. 3, 1883. Increase of pension of soldiers and sailors who have lost an arm or a leg in service.
Apr. 18, 1884. A felony for a person to falsely assume to be an officer of the United States.
Mar. 3, 1885. Pensions for loss of arm at shoulder joint.
Mar. 19, 1886. Increase of pension to widows and dependent relatives.
Aug. 4, 1886. Lost one hand or one foot, or an arm or leg.

Act.
Jan. 3, 1887. Survivors of the wrecked steamer *Jeannette*.
Jan. 29, 1887. Pensions to soldiers and sailors of Mexican war.
Jan. 29, 1887. Relief of the sufferers by the wreck of the U. S. S. *Ashuelot*.
June 7, 1888. Commencement of widow's pension.
Aug. 14, 1888. To relieve certain appointed or enlisted men of the Navy and Marine Corps from the charge of desertion.
Aug. 27, 1888. Deafness, pension therefor.
Feb. 12, 1889. Loss of both hands.
Mar. 4, 1890. Totally disabled.
June 27, 1890. Dependent parents.
June 30, 1890. Army and Navy pensions.
Aug. 29, 1890. Government employees in Departments shall not take fees for administering oaths, etc.
Feb. 10, 1891. Embezzlement of pension money.
Mar. 3, 1891. Navy pensions to be paid from income of Navy, etc., and no officer on active or retired list shall be paid a pension.
Mar. 3, 1891. Artificial limbs.
July 14, 1892. Intermediate rate between $72 and $30 per month.
July 27, 1892. Desertion, limitation as to filing application for removal.
Aug. 1, 1892. Pensions to soldiers and sailors in certain cases allowed though they had engaged in rebellion.
Dec. 21, 1893. Pension not to be withheld or suspended until after due notice.
Aug. 23, 1894. Vouchers may be executed before fourth-class postmasters.
Mar. 2, 1895. Accrued pensions, how and to whom paid.
Mar. 13, 1896. Death presumed from absence.
May 28, 1896. Masters, mates, pilots, and engineers to have same pension rights as soldiers and sailors in certain cases.

**June 6, 1874.**

See sec. 4720, R. S.

Special-act pensions equalized.

That all persons entitled to pensions under special acts fixing the rate of such pensions, and now receiving or entitled to receive a less pension than that allowed by the general pension laws under like circumstances, are, in lieu of their present rate of pension, hereby declared to be entitled to the benefits and subject to the limitations of the general pension laws, entitled, "An act to revise, consolidate, and amend the laws relating to pensions," approved March third, eighteen hundred and seventy-three; and that this act go into effect from and after its passage: *Provided*, That this act shall not be construed to reduce any pension granted by special act.

**June 18, 1874.**

Increasing pensions of totally disabled soldiers and sailors.

That section four of the act entitled "An act to revise, consolidate, and amend the laws relating to pensions," and approved March third, eighteen hundred and seventy-three, be so amended that all persons who, while in the military

See secs. 4697, 4698, R. S.
See amendment act June 16, 1880.

or naval service of the United States, and in the line of duty, shall have been so permanently and totally disabled as to require the regular personal aid and attendance of another person, by the loss of the sight of both eyes or by the loss of the sight of one eye, the sight of the other having been previously lost, or by the loss of both hands, or by the loss of both feet, or by any other injury resulting in total and permanent helplessness, shall be entitled to a pension of fifty dollars per month; and this shall be in lieu of a pension of thirty-one dollars and twenty-five cents per month granted to such person by said section: *Provided*, That the increase of pension shall not be granted by reason of any of the injuries herein specified, unless the same shall have resulted in permanent, total helplessness, requiring the regular personal aid and attendance of another person.

SEC. 2. That this act shall take effect from and after the fourth day of June, eighteen hundred and seventy four.

June 18, 1874.

See secs. 4697, 4698, R. S.
Loss of arm at or above elbow; leg at or above knee.

That all persons who are now entitled to pensions under existing laws, and who have lost either an arm at or above the elbow, or a leg at or above the knee, shall be rated in the second class, and shall receive twenty-four dollars per month: *Provided*, That no artificial limbs, or commutation therefor, shall be furnished to such persons as shall be entitled to pensions under this act.

SEC. 2. That this act shall take effect from and after the fourth day of June, eighteen hundred and seventy-four.

Aug. 15, 1876.

See secs. 4787, 4788, 4789, 4790, 4791, R. S.
Artificial limbs to disabled soldiers and seamen.

That every officer, soldier, seaman and marine, who, in the line of duty, in the military or naval service of the United States, shall have lost a limb, or sustained bodily injuries, depriving him of the use of any of his limbs, shall receive once every five years an artificial limb or appliance, or commutation therefor, as provided and limited by existing laws, under such regulations as the Surgeon-General of the Army may prescribe; and the period of five years shall be held to commence with the filing of the first application after the seventeenth day of June, in the year eighteen hundred and seventy.

Transportation.

SEC. 2. That necessary transportation to have artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded out of any money appropriated for the purchase of artificial limbs: *Provided*, That this act shall not be subject to the provisions of an act entitled "An act to increase pensions," approved June eighteenth, eighteen hundred and seventy-four.

Feb. 27, 1877.

Certain provisions for officers, noncommissioned officers, and enlisted men of the Army and Navy.

That for the purpose of correcting errors and supplying omissions in the act entitled "An act to revise and consolidate the statutes of the United States in force on the first day of December, anno Domini one thousand eight hundred and seventy-three," so as to make the same truly express such laws, the following amendments are hereby made therein:

* * * * * * *

Sec. 4770 repealed.

Section forty-seven hundred and seventy is struck out.

Section forty-seven hundred and eighty-seven is amended by adding at the end of the section the following:

Sec. 4787 amended.

"The provisions of this section shall apply to all officers, non-commissioned officers, enlisted and hired men of the land and naval forces of the United States, who, in the line of their duty as such, shall have lost limbs or sustained bodily injuries depriving them of the use of any of their limbs, to be determined by the Surgeon-General of the Army; and the term of five years herein specified shall be held to commence in each case with the filing of the application for the benefits of this section."

See act Mar. 3, 1891.

See Artificial limbs and tresses.

See secs. 4788, 4789, 4790, 4791, R. S.

Section forty-seven hundred and ninety is amended by inserting, in the second line, after the word "rebellion" the words "or is entitled to the benefits of section forty-seven hundred and eighty-seven."

See Artificial limbs, etc.

Section forty-seven hundred and ninety-one is amended by adding at the end of the section the following:

"The transportation allowed for having artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded from the appropriations for invalid pensions."

See Artificial limbs, etc.

* * * * * * *

Feb. 28, 1877.

That all persons who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand and one foot, or been totally and permanently disabled in both, shall be entitled to a pension for each of such disabilities, and at such a rate as is provided for by the provisions of the existing laws for each disability: *Provided*, That this act shall not be so construed as to reduce pensions in any case.

See secs. 4697, 4698, R. S.

Lost one hand or one foot or totally disabled in both, $36 per month.

Mar. 3, 1877.

That from and after the passage of this act, the pension for total disability of passed assistant engineers, assistant engineers, and cadet engineers in the naval service, respectively, shall be the same as the pensions allowed to officers of the line in the naval service with whom they have relative rank; and that all acts or parts of acts, inconsistent herewith be, and are hereby, repealed.

See sec. 4695, R. S.

Equalizing pensions of certain officers in the Navy.

Passed assistant engineers, cadet engineers.

Mar. 3, 1877.

That the law prohibiting the payment of any money on account of pensions to any person, or to the widow, children, or heirs of any deceased person, who, in any manner, engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterward voluntarily enlisted in the Army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty.

See sec. 4716, R. S.

Removal of disability.

Amended Aug. 1, 1892, to include Navy cases.

June 17, 1878.

That on and after the passage of this act, all soldiers and sailors who have lost either both their hands or both their feet or the sight of both eyes in the service of the United States, shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid to them, in the same manner as pensions are now paid to such persons, the sum of seventy-two dollars per month.

Increasing pensions to $72 per month for loss of both hands or both feet, or sight of both eyes. 4697, See secs. 4698, R. S.

See amendment act Mar. 3, 1879. See act June 16, 1880.

Jan. 25, 1879.

When pensions shall commence.

See sec. 4700, R. S., now repealed.

See note 1.

That all pensions which have been granted under the general laws regulating pensions, or may hereafter be granted, in consequence of death from a cause which originated in the United States service during the continuance of the late war of the rebellion, or in consequence of wounds, injuries, or disease received or contracted in said service during said war of the rebellion, shall commence from the date of the death or discharge from said service of the person on whose account the claim has been or shall hereafter be granted, or from the termination of the right of the party having prior title to such pension: *Provided*, The rate of pension for the intervening time for which arrears of pension are hereby granted shall be the same per month for which the pension was originally granted.

SEC. 2. That the Commissioner of Pensions is hereby authorized and directed to adopt such rules and regulations for the payment of the arrears of pensions hereby granted as will be necessary to cause to be paid to such pensioner, or, if the pensioner shall have died, to the person or persons entitled to the same, all such arrears of pension as the pensioner may be, or would have been, entitled to under this act.

Sec. 4717, R. S., repealed.

SEC. 3. That section forty-seven hundred and seventeen of the Revised Statutes of the United States, which provides that "no claim for pension not prosecuted to a successful issue within five years from the date of filing the same shall be admitted without record evidence from the War or Navy Department of the injury or the disease which resulted in the disability or death of the person on whose account the claim is made: *Provided*, That in any case in which the limitation prescribed by this section bars the further prosecution of the claim, the claimant may present, through the Pension Office, to the Adjutant-General of the Army or the Surgeon-General of the Navy, evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty; and if such evidence is deemed satisfactory by the officer to whom it may be submitted, he shall cause a record of the facts so proved to be made, and a copy of the same to be transmitted to the Commissioner of Pensions, and the bar to the prosecution of the claims shall thereby be removed," be, and the same is hereby, repealed.

See secs. 4768, 4769, 4786, R. S.

SEC. 4. No claim-agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension.

SEC. 5. That all act or parts of acts so far as they may conflict with the provisions of this act be, and the same are hereby, repealed.

Mar. 3, 1879.

Loss of both hands, both feet, sight both eyes.

That the act of June seventeenth, eighteen hundred and seventy-eight, entitled "An act to increase the pensions of certain soldiers and sailors who have lost both their hands

*Note 1.*—Arrears of pension: Not due to an executor or administrator, if not applied for by a pensioner; nor to a minor if never applied for by the soldier; nor to a widow during the period the soldier was living, when he made no application therefor. (Pension Office Decisions, p. 187.)

or both their feet, or the sight of both eyes, in the service of the country," be so construed as to include all soldiers and sailors who have become totally blind from causes occurring in the service of the United States.

See act June 17, 1878; see secs. 4697, 4698, R. S.; see act June 16, 1880.

Mar. 3, 1879.

That all pensioners now on the pension-rolls, or who may hereafter be placed thereon, for amputation of either leg at the hip joint, shall receive a pension at the rate of thirty-seven dollars and fifty cents per month from the date of the approval of this act.

See secs. 4697, 4698, R. S.

Amputation of leg at hip joint.

See notes 2 and 3.

June 16, 1880.

That all soldiers and sailors who are now receiving a pension of fifty dollars per month, under the provisions of an act entitled "An act to increase the pension of soldiers and sailors who have been totally disabled," approved June eighteenth, eighteen hundred and seventy-four, shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid them in the same manner as pensions are now paid to such persons, the sum of seventy-two dollars per month.

Totally disabled.

See secs. 4697, 4698, R. S.

SEC. 2. All pensioners whose pensions shall be increased by the provisions of this act from fifty dollars per month to seventy-two dollars per month shall be paid the difference between said sums monthly, from June seventeenth, eighteen hundred and seventy-eight, to the time of the taking effect of this act.

See act June 18, 1874; act Mar. 3, 1879; act June 17, 1878.

Extending provisions of act Mar. 4, 1890.

* * * * * * *

Feb. 26, 1881.

SEC. 2. All pensions payable, or to be paid under this act, to pensioners who are inmates of the National Home for Disabled Volunteer Soldiers, shall be paid to the treasurer or treasurers of said home, upon security given to the satisfaction of the managers, to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the home; said payment to be made by the pension agent upon a certificate of the proper officer of the home that the pensioner is an inmate thereof and is still living. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the home, the same shall be paid to the widow, or children, or in default of either to his legal representatives.

Regulating payment of pensions to inmates of National Soldiers' Home.

See act Aug. 7, 1882; also act Mar. 3, 1883.

* * * * * * *

Aug. 7, 1882.

*Provided*, That in addition to the persons now entitled to admission to said hospital, any inmate of the National Home for Disabled Volunteer Soldiers, who is now or may hereafter become insane shall, upon an order of the president of the board of managers of the said National Home, be admitted to said hospital and treated therein; and if any inmate so admitted from said National Home is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or in part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital, and be paid

22 Stat. L., 330.

Payment of pension to National Home, when.

*Note 2.*—When an officer of the Navy dies of disease contracted while on the retired list his widow is not entitled to a pension. (Pension Office Digest, p. 158.)

*Note 3.*—Dishonorable discharge does not forfeit soldier's right to pension.

over to the proper officer of said institution for the general uses thereof.

Feb. 28, 1883.

Any pledge or transfer of pension void.

R. S., 4745, 923. Amended.

SEC. 2. That section forty-seven hundred and forty-five, title fifty-seven of the Revised Statutes of the United States is hereby amended to read as follows:

SEC. 4745. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension which has been, or may hereafter be, granted, shall be void and of no effect, and any person who shall pledge, or receive as a pledge, mortgage, sale, assignment or transfer of any right, claim, or interest in any pension, or pension certificate, which has been or may hereafter be granted or issued, or who shall hold the same as collateral security for any debt, or promise, or upon any pretext of such security, or promise, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution; and any person who shall retain the certificate of a pensioner and refuse to surrender the same upon the demand of the Commissioner of Pensions, or a United States pension agent, or any other person authorized by the Commissioner of Pensions, or the pensioner, to receive the same shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution.

Penalties.

Mar. 3, 1883.

Increase of pension of soldiers and sailors who have lost an arm or leg in service.

Equivalent incapacity.

Loss of arm above elbow, or leg above the knee.

Proviso. R. S., 4699.

That from and after the passage of this act all persons on the pension-roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand or one foot, or been totally or permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or a foot, shall receive a pension of twenty-four dollars per month; that all persons now on the pension-roll, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at or above the elbow, or a leg at or above the knee, or shall have been otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall receive a pension of thirty dollars per month: *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.

Apr. 18, 1884.

Felony for person to falsely assume to be an officer of the United States; penalty therefor.

That every person who, with intent to defraud either the United States or any person, falsely assumes or pretends to be an officer or employé acting under the authority of the United States, or any Department or any officer of the Government thereof, and who shall take upon himself to act as such, or who shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valu-

able thing, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or imprisonment not longer than three years, or both said punishments, in the discretion of the court.

Mar. 3, 1885.

Soldiers and sailors of United States.

Pension hereafter for loss of arm at shoulder joint to be same as for loss of leg at hip joint.

That all soldiers and sailors of the United States who have had an arm taken off at the shoulder-joint, caused by injuries received in the service of their country while in the line of duty, and who are now receiving pensions, shall have their pensions increased to the same amount that the law now gives to soldiers and sailors who have lost a leg at the hip-joint; and this act shall apply to all who shall be hereafter placed on the pension-roll.

Mar. 19, 1886.

Increase pension to widows and dependent relatives.

In the nature of an amendment to secs. 4703 (p. 10), and 4707 (p. 12), R. S.

See act June 27, 1890.

That from and after the passage of this act the rate of pension for widows, minor children, and dependent relatives now on the pension-roll, or hereafter to be placed on the pension-roll, and entitled to receive a less rate than hereinafter provided, shall be twelve dollars per month; and nothing herein shall be construed to affect the existing allowance of two dollars per month for each child under the age of sixteen years: *Provided*, That this act shall apply only to widows who were married to the deceased soldier or sailor prior to its passage and to those who may hereafter marry prior to or during the service of the soldier or sailor. And all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 2. That no claim agent or attorney shall be recognized in the adjudication of claims under this act, nor shall any such person be entitled to receive any compensation whatever for services or pretended services in making applications thereunder.

Aug. 4, 1886.

Lost one hand or one foot or an arm or leg.

See sec. 4698, R. S., p. 6, and its amendments, as follows: Acts of June 18, 1874; (2) Feb. 26, 1877; June 17, 1878; Mar. 3, 1879; (2) June 16, 1880; Mar. 3, 1883, and Mar. 3, 1885.

That from and after the passage of this act all persons on the pension-rolls, and all persons hereafter granted a pension, who, while in the military or naval service of the United States and in line of duty, shall have lost one hand or one foot, or been totally disabled in the same, shall receive a pension of thirty dollars a month; that all persons now on the pension-rolls, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at or above the elbow or a leg at or above the knee, or been totally disabled in the same, shall receive a pension of thirty-six dollars per month; and that all persons now on the pension-rolls, and all persons, hereafter granted a pension who in like manner shall have lost either an arm at the shoulder-joint or a leg at the hip-joint, or so near the joint as to prevent the use of an artificial limb, shall receive a pension at the rate of forty-five dollars per month; *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.

*Proviso.*

Jan. 3, 1887.

Survivors of the wrecked steamer *Jeannette*.

Date of decease of officers to be deemed Mar. 23, 1882.

SEC. 2. That the twenty-third day of March, eighteen hundred and eighty-two, being the date of finding the remains of the commanding officer and others of the said expedition, shall be deemed and taken to be the date of the decease of the following named officers and enlisted men of the expedition, who lost their lives in the retreat from the wreck of the said steamer *Jeannette*, namely: Lieutenant-Commander George W. De Long; Lieutenant Charles W. Chipp; Passed Assistant-Surgeon James M. Ambler; Jerome J. Collins, meteorologist; William Dunbar, ice pilot; Walter Lee, machinist; Henrick H. Knack, Carl A. Gortz, Adolph Bressler, Hans H. Erichsen, Ah Sam, Alfred Sweetman, Henry D. Warren, Peter E. Johnson, Edward Star, and Albert G. Kuehne, seamen; Nelson Iverson, George W. Boyd, and Walter Sharvill, coal-heavers; and seaman Alexy.

Amount herein appropriated to be deducted from pension.

SEC. 3. * * * *Provided, further*, That in any case where heretofore a pension has been granted, or may hereafter in fact be granted, to any such widow, child, or dependent parent, by reason of the death of any of the persons named in the second section of this act, in the payment of such pension account shall be taken of any sum paid under this act, and to the extent of its amount said sum shall be in lieu and stead of such pension, and no further.

Jan. 29, 1887.

Pensions to soldiers and sailors of Mexican war; who entitled.

That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll the names of the surviving officers and enlisted men, including marines, militia, and volunteers, of the military and naval services of the United States, who being duly enlisted, actually served sixty days with the Army or Navy of the United States in Mexico, or on the coasts or frontier thereof, or *en route* thereto, in the war with that nation, or were actually engaged in a battle in said war, and were honorably discharged, and to such other officers and soldiers and sailors as may have been personally named in any resolution of Congress for any specific service in said war, and the surviving widow of such officers and enlisted men: *Provided*, That such widows have not remarried: *Provided*, That every such officer, enlisted man, or widow who is or may become sixty-two years of age, or who is or may become subject to any disability or dependency equivalent to some cause prescribed or recognized by the pension laws of the United States as a sufficient reason for the allowance of a pension, shall be entitled to the benefits of this act; but it shall not be held to include any person not within the rule of age or disability or dependence herein defined, or who incurred such disability while in any manner voluntarily engaged in or aiding or abetting the late rebellion against the authority of the United States.

*Proviso.*

*Proviso.*

Rate of pension.

SEC. 2. That pensions under section one of this act shall be at the rate of eight dollars per month, and payable only from and after the passage of this act, for and during the natural lives of the persons entitled thereto, or during the continuance of the disability for which the same shall be granted: *Provided*, That section one of this act shall not

*Proviso.*

apply to any person who is receiving a pension at the rate of eight dollars per month or more, nor to any person receiving a pension of less than eight dollars per month, except for the difference between the pension now received (if less than eight dollars per month) and eight dollars per month.

Rules and regulations to be prescribed by the Secretary of Interior.

SEC. 3. That before the name of any person shall be placed on the pension-roll under this act, proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension; and any person who shall falsely and corruptly take any oath required under this act shall be deemed guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension-roll the name of any person whenever it shall be made to appear by proof satisfactory to him that such name was put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this act. The loss of the certificate of discharge shall not deprive any person of the benefits of this act, but other record evidence of enlistment and service and of an honorable discharge may be deemed sufficient: *Provided*, That when any person has been granted a land-warrant, under any act of Congress, for and on account of service in the said war with Mexico, such grant shall be *prima facie* evidence of his service and honorable discharge; but such evidence shall not be conclusive, and may be rebutted by evidence that such land-warrant was improperly granted.

False oath to be deemed perjury.

Loss of certificate of discharge.

*Proviso.*

SEC. 4. That the pension laws now in force which are not inconsistent or in conflict with this act are hereby made a part of this act, so far as they may be applicable thereto.

Section 4716 repealed so far as conflicts.

SEC. 5. That section forty-seven hundred and sixteen of the Revised Statutes is hereby repealed so far as the same relates to this act or to pensioners under this act.

Political disability.

SEC. 6. That the provisions of this act shall not apply to any person while under the political disabilities imposed by the fourteenth amendment to the constitution of the United States.

June 7, 1888.

Commencement of widow's pension.

Modifying act approved Mar. 3, 1879, s. 2, proviso.

Re-enacted Mar. 1, 1889, and Aug. 29, 1890.

Oaths by U. S. officers.

That all pensions which have been, or which may hereafter be, granted under the general laws regulating pensions to widows in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, shall commence from the date of death of the husband. *And provided further*, That all United States officers now authorized to administer oaths are hereby required and directed to administer any and all oaths required to be made by pensioners and their witnesses, in the execution of their vouchers for their pensions free of charge.

Aug. 27, 1888.

Deafness.

That from and after the passage of this act all persons on the pension rolls of the United States, or who may hereafter be thereon, drawing pension on account of loss of hearing, shall be entitled to receive in lieu of the amount now paid in case of such disability, the sum of thirty dollars, in cases of total deafness, and such proportion thereof in

See note 4.

cases of partial deafness as the Secretary of the Interior may deem equitable; the amount paid to be determined by the degree of disability existing in each case.

Feb. 12, 1889.

Loss of both hands.

Act July 27, 1892, extended the time two years from July 1, 1892.

That from and after the passage of this act all persons who, in the military or naval service of the United States and in the line of duty have lost both hands, shall be entitled to a pension of one hundred dollars per month.

Mar. 4, 1890.

Totally disabled.

See note 5.

That all soldiers, sailors, and marines who have since the sixteenth day of June, eighteen hundred and eighty, or who may hereafter become so totally and permanently helpless from injuries received or disease contracted in the service and line of duty as to require the regular personal aid and attendance of another person, or who, if otherwise entitled, were excluded from the provisions of "An act to increase pensions of certain pensioned soldiers and sailors who are utterly helpless from injuries received or disease contracted while in the United States service," approved June sixteenth, eighteen hundred and eighty, shall be entitled to receive a pension at the rate of seventy-two dollars per month from the date of the passage of this act or of the certificate of the examining surgeon or board of surgeons showing such degree of disability made subsequent to the passage of this act.

June 27, 1890.

Dependent parents.

That in considering the pension claims of dependent parents, the fact of the soldier's death by reason of any wound, injury, casualty, or disease which, under the conditions and limitations of existing laws, would have entitled him to an invalid pension, and the fact that the soldier left no widow or minor children having been shown as required by law, it shall be necessary only to show by competent and sufficient evidence that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support: *Provided*, That all pensions allowed to dependent parents under this act shall commence from date of the filing of the application hereunder and shall continue no longer than the existence of the dependence.

Invalid, service ninety days.

Honorable discharge.

SEC. 2. That all persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from a mental or physical disability of a permanent character, not the result of their own vicious habits, which incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of

*Note 4.*—For total deafness, or deafness approaching to total, affecting one ear, one-eighth of a pension may be allowed. For slight deafness in both ears, or severe or total deafness in one ear and slight deafness in the other, one-fourth of a total pension. For severe deafness of both ears, or total deafness in one ear and severe deafness in the other, one-half of a total pension; or if the deafness should exist in a degree nearly total, three-fourths of a total pension. For total deafness the pension for total disability should be allowed except in the cases for which the rate for total disability is less than $13 a month. (Pension Office Digest, p. 146.)

*Note 5.*—Amendment of act June 16, 1880. An intermediate rate of pension was established by act of July 14, 1892, wherein those who require frequent and periodical aid and attendance should receive $50 per month.

the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding twelve dollars per month, and not less than six dollars per month, proportioned to the degree of inability to earn a support; and such pension shall commence from the date of the filing of the application in the Pension Office, after the passage of this act upon proof that the disability then existed, and shall continue during the existence of the same: *Provided*, That persons who are now receiving pensions under existing laws, or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act; and nothing herein contained shall be so construed as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act: *Provided, however*, That no person shall receive more than one pension for the same period: *And provided further*, That rank in the service shall not be considered in applications filed under this act.

Widows and minors.

SEC. 3. That if any officer or enlisted man who served ninety days or more in the Army or Navy of the United States during the late war of the rebellion, and who was honorably discharged has died, or shall hereafter die, leaving a widow without other means of support than her daily labor, or minor children under the age of sixteen years, such widow shall upon due proof of her husband's death, without proving his death to be the result of his army service, be placed on the pension-roll from the date of the application therefor under this act, at the rate of eight dollars per month during her widowhood, and shall also be paid two dollars per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: *Provided*, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shall commence from the date of application therefor after the passage of this act: *And provided further*, That said widow shall have married said soldier prior to the passage of this act.

Insane or permanently helpless children.

Attorney, fee of.

SEC. 4. That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than ten dollars, which sum shall be payable only upon the order of the Commissioner of Pensions, by the pension agent making payment of the pension allowed, and

Wrongfully withholding pension from pensioner.

any person who shall violate any of the provisions of this section, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offence, be fined not exceeding five hundred dollars, or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court.

Fine and imprisonment.

June 30, 1890.

Army and Navy pensions.

For Army and Navy pensions as follows: For invalids, widows, minor children, and dependent relatives; survivors and widows of the war of eighteen hundred and twelve and with Mexico, ninety-seven million ninety thousand seven hundred and sixty-one dollars: *Provided*, That the appropriation aforesaid for Navy pensions shall be paid from the income of the Navy pension fund, so far as the same may be sufficient for that purpose: *And provided further*, That the amount expended under each of the above items shall be accounted for separately.

*Proviso.*

Aug. 29, 1890.

Oaths.

* * * And no officer, clerk, or employee of any executive department who is also a notary public or other officer authorized to administer oaths, shall charge or receive any fee or compensation for administering oaths of office to employees of such department required to be taken on appointment or promotion therein.

Chief clerks to administer.

And the Chief Clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion.

Officer on retired list.

SEC. 2. Hereafter no officer of the Army, Navy or Marine Corps on the retired list shall draw or receive any pension under any law.

Feb. 10, 1891.

Embezzlement of pension money.

"Every guardian, conservator, curator, committee, tutor, or other person having charge and custody in a fiduciary capacity of the pension of his ward, who shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, shall be punished by fine not exceeding two thousand dollars or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court."

Mar. 3, 1891.

Pensions — active or retired list.

That the appropriation * * * for Navy pensions shall be paid from the income of the Navy pension fund, so far as the same may be sufficient for that purpose: *And provided further*, That the amount expended under each of the above items shall be accounted for separately: *And provided further*, That hereafter no pension shall be allowed or paid to any officer, non commissioned officer, or private in the Army, Navy, or Marine Corps of the United States, either on the active or retired list.

Artificial limb.

Amending act, s. 4787.

That section forty-seven hundred and eighty-seven of the Revised Statutes of the United States be amended by striking out the word "five" where it occurs therein, and inserting in lieu thereof the word "three" so that when amended said section will read as follows: Every officer,

soldier, seaman, and marine who was disabled during the war for the suppression of the rebellion, in the military or naval service, and in the line of duty, or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department since the seventeenth day of June, eighteen hundred and seventy, with an artificial limb or apparatus for resection who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every three years thereafter, under such regulations as have been or may be prescribed by the Surgeon-General of the Army.

July 14, 1892.

Totally disabled.

Those requiring frequent and periodical aid entitled to $50.

That soldiers and sailors who are shown to be totally incapacitated for performing manual labor by reason of injuries received or disease contracted in the service of the United States and in line of duty, and who are thereby disabled to such a degree as to require frequent and periodical, though not regular and constant, personal aid and attendance of another person, shall be entitled to receive a pension of fifty dollars per month from and after the date of the certificate of the examining surgeon or board of examining surgeons showing such degree of disability, and made subsequent to the passage of this act.

July 27, 1892.

Desertion.

Amending sec. 9, act of Mar. 2, 1889.

Limitation as to filing application for removal.

That section nine of the act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, passed March second, anno Domini eighteen hundred and eighty-nine, be, and the same is hereby, so amended as to extend the time for the limitation of the operation of said section for the period of two years from the first of July, eighteen hundred and ninety-two.

Aug. 1, 1892.

Pensions to soldiers and sailors in certain cases allowed though they had engaged in rebellion.

That the act entitled "An act amending the pension law so as to remove the disability of those who, having participated in the rebellion, have since its termination enlisted in the Army of the United States, and become disabled," approved March third, eighteen hundred and seventy-seven, be, and the same is hereby, amended so as to read as follows:

Act of Mar. 3, 1877, as amended. R. S., 4716.

"That the law prohibiting the payment of any money on account of pensions to any person, or to the widow, children, or heirs of any deceased person who, in any manner, engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterward voluntarily enlisted in either the Navy or Army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty."

* * * * * * *

Dec. 21, 1893.

Pension not to be withheld or suspended until after notice.

That any pension heretofore or that may hereafter be granted to any applicant therefor under any law of the United States authorizing the granting and payment of pensions, on application made and adjudicated upon, shall be deemed and held by all officers of the United States to be a vested right in the grantee to that extent that payment thereof shall not be withheld or suspended until, after due notice to the grantee of not less than thirty days, the Commissioner of Pensions, after hearing all the evidence,

shall decide to annul, vacate, modify, and set aside the decision upon which such pension was granted. Such notice to grantee must contain a full and true statement of any charges or allegations upon which such decision granting such pension shall be sought to be in any manner disturbed or modified.

Aug. 28, 1894.

Vouchers may be executed before fourth-class postmasters.

That hereafter, in addition to the officers now authorized to administer oaths in such cases, fourth-class postmasters of the United States are hereby required, empowered, and authorized to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers with like effect and force as officers having a seal; and such postmaster shall affix the stamp of his office to his signature to such vouchers, and he is authorized to charge and receive for each voucher not exceeding twenty-five cents, to be paid by the pensioner.

Mar. 2, 1895.

Accrued pensions, how and to whom paid.

That from and after the twenty-eighth day of September, eighteen hundred and ninety-two, the accrued pension to the date of the death of any pensioner, or of any person entitled to a pension having an application therefor pending, and whether a certificate therefor shall issue prior or subsequent to the death of such person, shall, in the case of a person pensioned, or applying for pension, on account of his disabilities or service, be paid, first, to his widow; second, if there is no widow, to his child or children under the age of sixteen years at his death; third, in case of a widow, to her minor children under the age of sixteen years at her death. Such accrued pension shall not be considered a part of the assets of the estate of such deceased person, nor be liable for the payment of the debts of said estate in any case whatsoever, but shall inure to the sole and exclusive benefit of the widow or children. And if no widow or child survive such pensioner, and in the case of his last surviving child who was such minor at his death, and in case of a dependent mother, father, sister, or brother, no payment whatsoever of their accrued pension shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of their last sickness and burial, if they did not leave sufficient assets to meet such expense. And the mailing of a pension check, drawn by a pension agent in payment of a pension due, to the address of a pensioner, shall constitute payment in the event of the death of a pensioner subsequent to the execution of the voucher therefor. And all prior laws relating to the payment of accrued pension are hereby repealed.

Mar. 2, 1895.

28 Stat. L., 703. Pensions.

* * * That so much of the fourth proviso of an Act entitled "An Act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and ninety-four, and for other purposes," approved March first, eighteen hundred and ninety-three, which reads as follows:

Alienage to be no bar.

"That from and after July first, eighteen hundred and ninety-three, no pension shall be paid to a nonresident who is not a citizen of the United States, except for actual disabilities incurred in the service,"

Repeal of 1893, Mar. 1, ch. 187, last clause, p. 102.

be and the same is hereby repealed.

That in considering claims filed under the pension laws, the death of an enlisted man or officer shall be considered as sufficiently proved if satisfactory evidence is produced establishing the fact of the continued and unexplained absence of such enlisted man or officer from his home and family for a period of seven years, during which period no intelligence of his existence shall have been received. And any pension granted under this Act shall cease upon proof that such officer or enlisted man is still living.

Mar. 13, 1896.

Death presumed from absence

Pension ceases, when.

SEC. 2. * * * No master, mate, pilot, or engineer of steam vessels licensed under title fifty-two of the Revised Statutes shall be liable to draft in time of War, except for the performance of duties such as required by his license; and, while performing such duties in the service of the United States, every such master, mate, pilot, or engineer shall be entitled to the highest rate of wages paid in the merchant marine of the United States for similar services; and, if killed or wounded while performing such duties under the United States, they, or their heirs, or their legal representatives shall be entitled to all the privileges accorded to soldiers and sailors serving in the Army and Navy, under the pension laws of the United States.

May 28, 1896.

Masters, mates, pilots, and engineers to have same pension rights as soldiers and sailors in certain cases.

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## PERJURY.

Sec.
1023. Prosecutions for perjury.
1624. To obtain claims.
5392. Punishment.
5393. Subornation of perjury.
5396. Form of indictment for perjury.
5397. Indictment for subornation of perjury.

SEC. 1023. In prosecutions for perjury committed on examination before a naval general court-martial, or for the subornation thereof, it shall be sufficient to set forth the offense charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought before, or intended to be brought before, said court.

Title 13, chap. 18.

Prosecutions for perjury before a naval court-martial.

July 17, 1862, s. 1, art. 13, v. 12, p. 604.

SEC. 1624. Art. 14. Fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States

Title 15, chap. 10.

For the purpose of obtaining claims.

Mar. 2, 1863, s. 1, v. 12, p. 696.

* * * * * * *

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is

Title 70, chap. 4.

Perjury.

Apr. 30, 1790, s. 18, v. 1, p. 116; Mar. 3, 1825, s. 13, v. 4, p. 118.

guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

Subornation of perjury. Apr. 30, 1790, s. 18, v. 1, p. 116; Mar. 3, 1825, s. 13, v. 4, p. 118.

SEC. 5393. Every person who procures another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

Form of indictment for perjury. Apr. 30, 1790, s. 19, v. 1, p. 116.

SEC. 5396. In every presentment or indictment prosecuted against any person for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, and before whom the oath was taken, averring such court or person to have competent authority to administer the same, together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, or any affidavit, deposition, or certificate, other than as hereinbefore stated, and without setting forth the commission or authority of the court or person before whom the perjury was committed.

Indictment for subornation of perjury. Ibid., s. 20.

SEC. 5397. In every presentment or indictment for subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, or any affidavit, deposition, or certificate, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

## PIRACY, ROBBERY.


Sec.
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5384. Confederating, etc., with pirates.
5533. Accessory after the fact of piracy; punishment.


Title 13, chap. 3. Mar. 3, 1823, v. 3, p. 789; May 15, 1820, v. 3, p. 600; Jan. 30, 1823, v. 3, p. 721. District courts to have jurisdiction of cases.

SEC. 563. The district courts shall have jurisdiction of all cases arising under act for the punishment of piracy, when no circuit court is held in the district of such court.

Title 48, chap. 8.

Public vessels to suppress piracy.
Mar. 3, 1819, s. 1, v. 3, p. 510; Jan. 30, 1823, v. 3, p. 721.

SEC. 4293. The President is authorized to employ so many of the public armed vessels as in his judgment the service may require, with suitable instructions to the commanders thereof, in protecting the merchant-vessels of the United States and their crews from piratical aggressions and depredations.

Seizure of piratical vessels.
Mar. 3, 1819, s. 2, v. 3, p. 512; Jan. 30, 1823, v. 3, p. 721.

SEC. 4294. The President is authorized to instruct the commanders of the public armed vessels of the United States to subdue, seize, take, and send to any port of the United States, any armed vessel or boat, or any vessel or boat, the crew whereof shall be armed, and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel of the United States, or of the citizens thereof, or upon any other vessel; and also to retake any vessel of the United States, or its citizens, which may have been unlawfully captured upon the high seas.

Merchant vessels may resist pirates.
Mar. 3, 1819, s. 3, v. 3, p. 513; Jan. 30, 1823, v. 3, p. 721.

SEC. 4295. The commander and crew of any merchant-vessel of the United States, owned wholly, or in part, by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of, the United States.

Condemnation of piratical vessels.
Mar. 3, 1819, s. 4, v. 3, p. 513; Jan. 30, 1823, v. 3, p. 721; Aug. 5, 1861, s. 1, v. 12, p. 314.

SEC. 4296. Whenever any vessel, which shall have been built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy as defined by the law of nations, or from which any piratical aggression, search, restraint, depredation, or seizure shall have been first attempted or made, is captured and brought into or captured in any port of the United States, the same shall be adjudged and condemned to their use, and that of the captors after due process and trial in any court having admiralty jurisdiction, and which shall be holden for the district into which such captured vessel shall be brought; and the same court shall thereupon order a sale and distribution thereof accordingly, and at its discretion.

Seizure of vessels fitted out for piracy.
Aug. 5, 1861, s. 1, v. 12, p. 314.

SEC. 4297. Any vessel built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy, as defined by the law of nations, shall be liable to be captured and brought into any port of the United States if found upon the high seas, or to be seized if found in any port or place within the United States, whether the same shall have actually sailed upon any piratical expedition or not, and whether any act of piracy shall have been committed or attempted upon or

from such vessel or not; and any such vessel may be adjudged and condemned, if captured by a vessel authorized as hereinafter mentioned, to the use of the United States and to that of the captors, and if seized by a collector, surveyor, or marshal, then to the use of the United States.

What vessels may be authorized to seize pirates.
Idem, s. 2.
See note 1.

SEC. 4298. The President is authorized to instruct the commanders of the public armed vessels of the United States, and to authorize the commanders of any other armed vessel sailing under the authority of any letters of marque and reprisal granted by Congress, or the commanders of any other suitable vessels, to subdue, seize, take, and, if on the high seas, to send into any port of the United States, any vessel or boat built, purchased, fitted out, or held as mentioned in the preceding section.

Duties of officers of customs and marshals.
Idem, s. 3.

SEC. 4299. The collectors of the several ports of entry, the surveyors of the several ports of delivery, and the marshals of the several judicial districts within the United States, shall seize any vessel or boat built, purchased, fitted out, or held as mentioned in section forty-two hundred and ninety-seven, which may be found within their respective ports or districts, and to cause the same to be proceeded against and disposed of as provided by that section.

Title 70, chap. 1.

Accessory before the fact to piracy, etc.
Apr. 30, 1790, s. 10, v. 1, p. 114.
See act of Aug. 6, 1894, amending secs. 5365 and 5366, title, "Merchant vessels."

SEC. 5323. Every person who knowingly aids, abets, causes, procures, commands, or counsels another to commit any murder, robbery, or other piracy upon the seas, is an accessory before the fact to such piracies, and every such person being thereof convicted shall suffer death.

Accessory after the fact to robbery or piracy.
Apr. 30, 1790, s. 11, v. 1, p. 114.
See sec. 5533.

SEC. 5324. Every person who receives or takes into custody any vessel, goods, or other property feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, and every person who, knowing that such pirate or robber has done or committed any such piracy or robbery, on the land or at sea, receives, entertains, or conceals any such pirate or robber, is an accessory after the fact to such robbery or piracy.

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*Note 1.*—Piracy is defined by the law of nations to be a forcible depredation upon property on the high seas, without lawful authority, done *animo furandi;* that is, as defined, in this connection, in a spirit and intention of universal hostility. A pirate is said to be one who roves the sea in an armed vessel, without any commission from any sovereign state, on his own authority, and for the purpose of seizing by force and appropriating to himself, without discrimination, every vessel he may meet. United States *v.* Baker, 5 Blatchford, 11, 12. Cited in Cadwalader's State Department Digest, p. 77.)

To make the firing of one vessel into another a piratical aggression within the act of 1819, section 5368, R. S., it must be a first aggression unprovoked by any previous act of hostility or menace from the other side. (Cadwalader's Digest; Op., IX, 114.)

Robbery, or forcible depredation upon the high sea, *animo furandi*, is piracy by the law of nations. Cadwalader's Digest, p. 76, cites 5 Wheaton, 153. A vessel loses her national character by assuming a piratical character, and a piracy committed by a foreigner from on board such a vessel whatever, is punishable under act of 1790, section 5360, R. S. (Idem, p. 77, cites 5 Wheaton, 184.)

Every hostile attack, in time of peace, is not necessarily piratical. It may be by mistake, or in necessary self-defense, or to repel a supposed meditated attack by pirates. It may be justifiable, and then no blame attaches to the act; or it may be without just excuse, and then it carries responsibility in damages. (Cadwalader's Digest, p. 77, cites 11 Wheaton, 40, 41, and 2 Howard, 236.)

Merchant vessels suspected of being engaged in illicit trade forbidden by the laws of Congress may be seized and detained by public armed vessels. (Op., 3, 405.)

SEC. 5368. Every person who, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterward brought into or found in the United States, shall suffer death.

Piracy under the law of nations.
See secs. 5323-5333.
Mar. 3, 1819, s. 5, v. 3, p. 513; May 15, 1820, s. 2, v. 3, p. 600; Jan. 30, 1823, v. 3, p. 721.

SEC. 5369. Every seaman who lays violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall suffer death.

Seaman laying violent hands on his commander.
Apr. 30, 1790, s. 8, v. 1, p. 113.

SEC. 5370. Every person who, upon the high seas, or in any open roadstead, or in any haven, basin, or bay, or in any river where the sea ebbs and flows, commits the crime of robbery, in or upon any vessel, or upon any ship's company of any vessel, or the lading thereof, is a pirate, and shall suffer death.

Robbery upon the high seas.
May 15, 1820, s. 3, v. 3, p. 600.

SEC. 5371. Every person engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, who lands from such vessel and on shore commits robbery, is a pirate, and shall suffer death.

Robbery on shore by crew of piratical vessel.
Ibid.

SEC. 5372. Every person who commits upon the high seas, or in any river, harbor, basin, or bay, out of the jurisdiction of any particular State, murder or robbery, or any other offense which, if committed within the body of a county, would be punishable with death by the laws of the United States, is a pirate, and shall suffer death.

Murder, etc., upon the high seas.
Apr. 30 1790, s. 8, v. 1, p. 113.

SEC. 5373. Every citizen who commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state or on pretense of authority from any person, is, notwithstanding the pretense of such authority, a pirate, and shall suffer death.

Piracy under color of a commission from a foreign power.
Idem, s. 9, v. 1, p. 114.

SEC. 5374. Every subject or citizen of any foreign state, who is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is guilty of piracy, and shall suffer death.

Piracy by subjects or citizens of a foreign state.
Mar. 3, 1847, v. 9, p. 175.

SEC. 5375. Every person who, being of the crew or ship's company of any foreign vessel engaged in the slave-trade, or being of the crew or ship's company of any vessel owned wholly or in part, or navigated for or in behalf of any citizen, forcibly confines or detains on board such vessel any negro or mulatto, with intent to make such negro or mulatto a slave, or, on board such vessel, offers or attempts to sell, as a slave, any negro or mulatto, or on the high seas, or anywhere on tide-water, transfers or delivers to any other vessel any negro or mulatto with intent to make such negro or mulatto a slave, or lands or delivers on shore from on board such vessel any negro or mulatto with intent to make

Piracy in confining or detaining negroes on board vessels.
May 15, 1820, s. 5, v. 3, p. 601.
See secs. 5525, 5551-5560, Slave Trade.

sale of, or having previously sold such negro or mulatto as a slave, is a pirate, and shall suffer death.

Piracy in landing, seizing, etc., negroes on any foreign shore. Idem, s. 4, p. 600.

SEC. 5376. Every person who, being of the crew or ship's company of any foreign vessel engaged in the slave-trade, or being of the crew or ship's company of any vessel, owned in whole or part, or navigated for, or in behalf of, any citizen, lands from such vessel, and, on any foreign shore, seizes any negro or mulatto with intent to make such negro or mulatto a slave, or decoys, or forcibly brings, or carries, or receives such negro or mulatto on board such vessel, with like intent, is a pirate, and shall suffer death.

Running away with or yielding up vessel or cargo. Aug. 8, 1846, s. 5, v. 9, p. 73; Apr. 30, 1790, s. 8, v. 1, p. 113.

SEC. 5383. Every captain, other officer, or mariner, of a vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, who piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of fifty dollars, or who yields up such vessel voluntarily to any pirate, shall be fined not more than ten thousand dollars, or imprisoned at hard labor not more than ten years, or both.

Confederating, etc., with pirates. Apr. 20, 1790, s. 12, v. 1, p. 115.

SEC. 5384. If any person attempts or endeavors to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or with any goods, wares, or merchandise, or to turn pirate, or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such, or furnishes such pirate with any ammunition, stores, or provisions of any kind, or fits out any vessel knowingly and with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or if any person consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or if any seaman confines the master of any vessel, he shall be imprisoned not more than three years, and fined not more than one thousand dollars.

Title 70, chap. 8.

Accessory after the fact to murder, robbery, or piracy. Apr. 30, 1790, s. 11, v. 1, p. 114. See sec. 5324.

SEC. 5533. Every accessory after the fact to murder, robbery, or piracy, shall be imprisoned not more than three years, and fined not more than five hundred dollars.

## PILOTS—PILOTAGE.

Sec.
4235. State regulation of pilots.
4236. Pilots on boundaries.
4237. No discrimination in rates of pilotage.

Act Apr. 17, 1874. Aliens, in certain cases, to be licensed as engineers and pilots.
Act Apr. 5, 1882. Masters, engineers, etc., to pay license fee.

Title 48, chap. 5.

State regulation of pilots. Aug. 7, 1789, s. 4, v. 1, p. 54.

SEC. 4235. Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for the purpose.

Pilots on boundaries between States.

SEC. 4236. The master of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, may employ any pilot duly

licensed or authorized by the laws of either of the States bounded on such waters, to pilot the vessel to or from such port.

Mar. 2, 1837, v. 5, p. 153.

No discrimination in rates of pilotage.

SEC. 4237. No regulations or provisions shall be adopted by any State which shall make any discrimination in the rate of pilotage or half-pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated.

July 13, 1866, v. 14, p. 93. See note 1.

Aliens, in certain cases, may be licensed as engineers and pilots to serve on steam vessels.

Apr. 17, 1874.

18 Stat. L., 30.

That any alien who, in the manner provided for by law, has declared his intention to become a citizen of the United States, and who shall have been a permanent resident of the United States for at least six months immediately prior to the granting of such license, may be licensed, as if already naturalized, to serve as an engineer or pilot upon any steam-vessel subject to inspection under the provisions of the act entitled "An act to provide for the better security of life on board of vessels propelled, in whole or in part, by steam, and for other purposes," approved February twenty-eighth, eighteen hundred and seventy-one (2).

R. S., secs. 4131, 4438, 4441, 4442. 1884, June 26, ch. 121. See title Aliens and citizenship, p. 440. See note 2.

Masters, engineers, pilots, and mates of steamers to pay license fee.

Apr. 5, 1882.

22 Stat. L., 40.

That Section forty-four hundred and fifty-eight of the Revised Statutes be, and is hereby, amended by striking out of the paragraph, beginning in the eighth line thereof, the following words, that is to say "Each Master, chief engineer, and first class pilot licensed as herein provided shall pay for every certificate granted by any inspector or inspectors the sum of ten dollars and every chief Mate, engineer, and pilot of an inferior grade shall pay for every certificate so granted the sum of five dollars" and insert in lieu thereof the following "Each Master, engineer, pilot, and Mate licensed as herein provided shall pay for every certificate granted by any inspector or inspectors (3) the sum of fifty cents."

Substitute for part of R. S., sec. 4458. 1886, June 19, ch. 421, s. 1, p. 492. See title Aliens and citizenship. See sec. 4438, R. S., in regard to licenses of engineers and pilots. See note 3.

Also, 16 Stat. L., Feb. 28, 1871, sec. 14, p. 446.

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*Note 1.*—Government vessels are not required to employ and pay branch pilots upon entering the ports and harbors of the United States. The exemption extends to all public vessels whether armed or not. (Op., IV, 532, Sept. 9, 1846, Mason.)

The penalties imposed by State laws for piloting vessels without due license from the State, have no application to persons employed as pilots on board public vessels of the United States, the latter vessels being within the exclusive jurisdiction of the United States. (Op., XVI, 647, Oct. 22, 1879.)

The term "public vessels" does not apply to vessels of the Navy alone. Within the meaning of the inspection and navigation laws public vessels are those owned by the United States, and those used by them for public purposes. Those laws warrant no distinction between public vessels under the control of the Navy Department and public vessels under the control of any other department of the Government. Unlicensed pilots and engineers can be lawfully employed on them. (Op., XIII, p. 249, Hoar, June 1, 1870.)

*Note 2.*—The provisions of the act of 1871, ch. 100 (16 Stat. L., 440), here referred to, are incorporated into Revised Statutes in secs. 4399–4500.

*Note 3.*—By 1886, June 19, ch. 421, s. 1, p. 492, this fee is abolished, but as inspectors are to be paid from the Treasury such compensation as they would have received prior to that date, this is retained as possibly in force for some purposes. But see R. S., sec. 4414.

## POSTAGE, MAIL MATTER, ETC.

Sec.
3912. Postage on foreign mail-matter.
3913. Postage on irregular sea-letters.
3976. Vessels carrying mails.
Act Mar. 3, 1879. Domestic postage.
Act Mar. 3, 1877. Penalty envelopes.
Act Mar. 3, 1879. Use of penalty envelopes extended.

Title 46, chap. 4.

Foreign postage.

Postage on foreign mail matter.

June 8, 1872, s. 165, v. 17, p. 304.

SEC. 3912. The rate of United States postage on mail-matter sent to or received from foreign countries with which different rates have not been established by postal convention or other arrangement, when forwarded by vessels regularly employed in transporting the mail, shall be ten cents for each half ounce or fraction thereof on letters, unless reduced by order of the Postmaster-General; two cents each on newspapers; and not exceeding two cents per each two ounces, or fraction thereof, on pamphlets, periodicals, books, and other printed matter, which postage shall be prepaid on matter sent and collected on matter received; and to avoid loss to the United States in the payment of balances, the Postmaster-General may collect the unpaid postage on letters from foreign countries in coin or its equivalent.

Postage on irregular sea letters.

Ibid., s. 166.

SEC. 3913. All letters conveyed by vessels not regularly employed in carrying the mail shall, if for delivery within the United States, be charged with double postage, to cover the fee paid to the vessel.

Title 46, chap. 9.

United States vessels to carry mails; oath; penalty.

Ibid., s. 222, p. 310.

See sec. 4203, Merchant service.

SEC. 3976. The master of any vessel of the United States bound from any port therein to any foreign port, or from any foreign port to any port of the United States, shall, before clearance, receive on board and securely convey all such mails as the Post-Office Department, or any diplomatic or consular officer of the United States abroad, shall offer; and he shall promptly deliver the same, on arriving at the port of destination, to the proper officer, for which he shall receive two cents for every letter so delivered; and upon the entry of every such vessel returning from any foreign port, the master thereof shall make oath that he has promptly delivered all the mail placed on board said vessel before clearance from the United States; and if he shall fail to make such oath the vessel shall not be entitled to the privileges of a vessel of the United States.

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Mar. 3, 1879.

Domestic postage.

Division of mail matter.

Ch. 180, s. 7, v. 20, p. 355.

That mailable matter shall be divided into four classes:
First, written matter;
Second, periodical publications;
Third, miscellaneous printed matter;
Fourth, merchandise.

Mailable matter of the first class shall embrace letters, postal cards, and all matters wholly or partly in writing, except as hereinafter provided.

Postal cards.

Idem, s. 9.

Postal cards shall be transmitted through the mails at a postage charge of one cent each, including the cost of manufacture; and drop letters shall be mailed at the rate of two cents per half ounce or fraction thereof, including delivery at letter carrier offices, and one cent for each half ounce or fraction thereof where free delivery by carrier is

not established. The Postmaster-General may, however, provide, by regulation, for transmitting unpaid and duly certified letters of soldiers, sailors, and marines in the service of the United States to their destination, to be paid on delivery.

Second-class matter. Idem, s. 10.

That mailable matter of the second class shall embrace all newspapers and other periodical publications which are issued at stated intervals, and as frequently as four times a year and are within the conditions named in section twelve and fourteen.

Third-class matter defined. Rate of postage. Idem, s. 17.

That mail matter of the third class shall embrace books, transient newspapers, and periodicals, circulars, and other matter wholly in print (not included in section twelve) [2d class matter], proof sheets, corrected proof sheets, and manuscript copy accompanying the same, and postage shall be paid at the rate of one cent for each two ounces or fractional part thereof, and shall fully be prepaid by postage stamps affixed to said matter. Printed matter other than books received in the mails from foreign countries under the provisions of postal treaties or conventions shall be free of customs duty, and books which are admitted to the international mails exchanged under the provisions of the Universal Postal Union Convention may, when subject to customs duty, be delivered to addresses in the United States under such regulations for the collection of duties as may be agreed upon by the Secretary of the Treasury and the Postmaster-General.

"Circular" defined. Idem, s. 18.

That the term "circular" is defined to be a printed letter, which, according to internal evidence, is being sent in identical terms to several persons. A circular shall not lose its character as such, when the date and the name of the address and of the sender shall be written therein, nor by the correction of mere typographical errors in writing.

"Printed matter" defined. Idem, s. 19.

That "printed matter" within the intendment of this act is defined to be the reproduction upon paper, by any process except that of handwriting, of any words, letters, characters, figures, or images, or of any combination thereof, not having the character of an actual and personal correspondence.

Fourth-class matter. Idem, s. 20. See note 1.

That mailable matter of the fourth class shall embrace all matter not embraced in the first, second, or third class, which is not in its form or nature liable to destroy, deface, or otherwise damage the contents of the mail bag, or harm the person of any one engaged in the postal service, and is not above the weight provided by law, which is hereby declared to be not exceeding four pounds for each package thereof, except in the case of single books weighing in excess of that amount, and except for books and documents published or circulated by order of Congress, or official matter emanating from any of the departments of the government, or from the Smithsonian Institution, or which is not declared non-mailable under the provision of section thirty-eight hundred and ninety-three of the Revised Statutes, as amended by the act of July twelfth, eighteen hundred and seventy-six, or matter appertaining to lotteries, gift concerts, or fraudulent schemes or devices.

*Note 1.*—Obscene books, pictures, scurrilous letters, etc.

Mar. 3, 1879.

Deficient postage.
S. 26, ch. 180, v. 20, p. 355.

All mail-matter of the first class upon which one full rate of postage has been prepaid shall be forwarded to its destination, charged with the unpaid rate, to be collected on delivery. * * *

Postage on first-class matter.
Mar. 3, 1883, s. 1, v. 22, p. 455.

And upon all matter of the first class * * * postage shall be charged, on and after the first day of October A. D. eighteen hundred and eighty-three at the rate of two cents for each half ounce or fraction thereof.

How procured.
Mar. 3, 1883, ch. 128, s. 2, v. 22, p. 563.
See note 2.

That the Secretaries, respectively, of the Departments of State, of the Treasury, War, Navy, and of the Interior, and the Attorney-General, are authorized to make requisitions upon the Postmaster-General for the necessary amount of official postage-stamps for the use of their departments, not exceeding the amount stated in the estimates submitted to Congress; and upon presentation of proper vouchers therefor at the Treasury, the amount thereof shall be credited to the appropriation for the service of the Post-Office Department for the same fiscal year.

Inclosure to Members of Congress.
Idem.

And it shall be the duty of the respective departments to inclose to Senators, Representatives, and Delegates in Congress, in all official communications requiring answers, or to be forwarded to others, penalty envelopes addressed as far as practicable, for forwarding or answering such official correspondence.

Mar. 3, 1877, s. 5, v. 19, p. 355.
Penalty envelopes.

That it shall be lawful to transmit through the mail, free of postage, any letters, packages, or other matters relating exclusively to the business of the Government of the United States: *Provided*, That every such letter or package to entitle it to pass free shall bear over the words "Official business" an indorsement showing also the name of the Department, and, if from a bureau or office, the names of the Department and bureau or office, as the case may be, whence transmitted. And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor, and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction.

Indorsement.

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*Note 2.*—The Department stamps can be used to prepay fees on registered letters. (Op. Asst. Att'y Gen'l, P. O. Dept., May 11, 1879.)

They can also be used to pay return postage on answers to communications sent by Government officers to private individuals; the penalty envelopes can not be so used. (Ibid.)

Official correspondence for Canada may be sent in penalty envelopes or prepaid with Department stamps. If sent to other foreign countries embraced in the Universal Postal Union, it can be prepaid only by means of the ordinary postage stamps. It can not be sent in the penalty envelopes.

Foreign countries to which official correspondence may be prepaid with the official postage stamps are such only as are supplied with mails from the United States by direct services, and not through the intermediary of Postal Union countries. The following are of that class: The Australian colonies (North, South, and West Australia, New South Wales, Queensland, and Victoria), Tasmania, New Zealand, Chatham, Fiji, Samoan, and Norfolk Islands, via San Francisco; Bolivia, via Colon and Panama; North China destinations, via San Francisco, in mails to the United States postal agent at Shanghai. (Post-Office Department to Navy Department, 1883.)

SEC. 6. That for the purpose of carrying this act into effect, it shall be the duty of each of the Executive Departments of the United States to provide for itself and its subordinate offices the necessary envelopes; and in addition to the indorsement designating the Department in which they are to be used, the penalty for the unlawful use of these envelopes shall be stated thereon.

Idem. s. 6. See note 3.

The provisions of the above sections (act March 3, 1877) "are hereby extended to all officers of the United States Government, and made applicable to all official mail-matter transmitted between any of the officers of the United States, or between any such officer and either of the executive departments or officers of the government, the envelopes of such matter in all cases to bear appropriate indorsements containing the proper designation of the office from which the same is transmitted, with a statement of the penalty for their misuse. And the provisions of said fifth and sixth sections are hereby likewise extended and made applicable to all official mail-matter sent from the Smithsonian Institution: *Provided*, That this act shall extend or or apply to pension-agents or other officers who receive a fixed allowance as compensation for their services, including expenses for postage."

Mar. 3, 1879, s. 29, v. 20, p. 362. Use of penalty envelopes extended.

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That the Postmaster-General is hereby authorized to take the necessary steps to introduce and furnish for public use a letter-sheet envelope, on which postage-stamps of the denominations now in use on ordinary envelopes shall be

Letter-sheet envelopes; double postal cards. Mar. 3, 1879, s. 32, v. 20, p. 362.

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*Note 3.*—This section does not impose upon the Executive Department at Washington the duty of furnishing such envelopes to the various subordinate officers throughout the United States who are under their supervision, but whose offices are not offices in those Departments, excepting, of course, cases where that duty is required by other statutory provisions than those above mentioned. (Op., XVI, p. 455, Jan. 30, 1880, Devens.)

Where the envelopes are not furnished by the Departments, they may be prepared for their own use by the officers contemplated in section 29 of said act of March 3, 1879. This statute does not require that the penalty, etc., on such envelopes should be printed rather than written. (Ibid.)

The indorsements on the penalty envelopes may be printed, written, or impressed by stamp. (Op., Assistant Attorney-General, P. O. Department, Apr. 21, 1879.)

The penalty envelopes can not be properly used by officers in replying to a postmaster on matters not official; for instance, when a postmaster notifies said officer of private mail matter being in the office, which will be sent to him on the return of the requisite postage, the officer can not use the penalty stamp in making his reply. (Post-Office ruling.)

Officers of the Navy, who have no "office," in the sense that term is generally used, can send official mail matter, free of postage, between themselves, or to the Executive Departments, by using envelopes bearing the indorsement "official business," with their signature and rank, and a statement of the penalty for their misuse—the indorsements to be printed, or impressed by a stamp, or written. (Op. Assistant Attorney-General, P. O. D., Apr. 20, 1879.)

The twenty-ninth section of the act of March 3, 1879 (Postal Laws and Regulations, section 251), extending to all officers of the United States Government the provisions of the sections numbered 249 and 250, Postal Laws and Regulations, for the transmission of official mail matter, requires all officers who are not departmental in their character to use envelopes which bear the appropriate indorsements, containing the name of the office from which the same are transmitted, with a statement of the penalty for their misuse; and the use of the envelopes must be absolutely restricted to official mail matter transmitted between officers of the United States, or between any such officer and either of the Executive Departments or officers of the Government. The signature of the officer and his official title is not a compliance with the law; the name of the office from which they are transmitted must also be given on the envelope. (Rule 604, Post-Office Guide, Jan., 1883.)

Official communications may be sent by officers of the Government under cover of the penalty envelope to private individuals; but such envelopes can not be inclosed for the purpose of eliciting a reply. (Rule 606, idem.)

placed. And the Postmaster-General is also authorized to introduce and furnish for public use a double postal card, on which shall be placed two one-cent stamps, and said card to be so arranged for the address that it may be forwarded and returned, said cards to be sold for two cents apiece; and also to introduce and furnish for public use a double-letter envelope, on which stamps of the denominations now in use may be placed, and with the arrangement for the address similar to the double postal card; said letter-sheet and double postal card and double envelope to be issued under such regulations as the Postmaster-General may prescribe.

Jan. 27, 1894.

28 Stat. L., 30.

Recalled letters of advice to be attached to accounts.

SEC. 6. That section four thousand and thirty-nine of the Revised Statutes of the United States be amended by adding the following:

"That it shall be the duty of the postmasters to attach to their accounts rendered to the Auditor of the Treasury for the Post-Office Department the letters of advice, or if lost evidence of that fact, recalled from the post-office to which originally sent for all repayments of domestic money orders provided for in this section and in section four thousand and thirty-eight of the Revised Statutes of the United States."

R. S., secs. 4038, 4039.

Act Jan. 27, 1894.

Replacing lost orders.

Substitute for sec. 4040.

1894, July 16, ch. 137.

SEC. 11. Whenever a money-order has been lost, within one year from the last day of the month of issue, the Postmaster-General, upon the application of the remitter or payee of such order, may cause a duplicate thereof to be issued, without charge, providing the party losing the original shall furnish a certificate from the postmaster by whom it was payable that it has not been, and will not thereafter be, paid; and a similar certificate from the postmaster by whom it was issued that it has not been, and will not thereafter be, repaid.

Jan. 27, 1894.

28 Stat. L., 30.

Postal notes abolished.

Repeal of 1887, Jan. 3, ch. 13. s. 1 (1 Supp. R. S., 517, 518); 1883, Mar. 3 ch. 123, ss. 1, 2 (1 Supp. R. S., 405, 406).

That the first section of the Act approved January third, eighteen hundred and eighty-seven, modifying certain provisions of the Act approved March third, eighteen hundred and eighty-three, and entitled "An Act to modify the postal money-order system, and for other purposes,"

and the first section and such provisions of the second section as are applicable to postal notes of the Act approved March third, eighteen hundred and eighty-three, entitled "An Act to modify the postal money-order system, and for other purposes,"

be, and the same are hereby, repealed,

—already issued, to be paid.

but nothing herein contained shall prevent the payment, after July first, eighteen hundred and ninety-four, in the manner provided by existing law, of postal notes issued prior to that date, and any such postal notes, if presented for payment more than one year from the last day of the month of their issue, may be paid by warrant, as provided by section four of this Act in the case of money orders.

Fees for money orders reduced.

SEC. 2. That section three of the said Act of March third, eighteen hundred and eighty-three, as amended by the Act

of June twenty-ninth, eighteen hundred and eighty-six, entitled "An Act to reduce the fee on domestic money orders for sums not exceeding five dollars," be amended to read as follows:

Substitute for 1883, Mar. 3, ch. 123, s. 3, and 1886, June 29, ch. 568 (1 Supp. R.S., 406, 498).

"That a money order shall not be issued for more than one hundred dollars, and that fees for domestic money orders shall be as follows, to wit:

Fees for money orders.

"For orders not exceeding two dollars and fifty cents, three cents.

"For orders exceeding two dollars and fifty cents and not exceeding five dollars, five cents.

"For orders exceeding five dollars and not exceeding ten dollars, eight cents.

"For orders exceeding ten dollars and not exceeding twenty dollars, ten cents.

"For orders exceeding twenty dollars and not exceeding thirty dollars, twelve cents.

"For orders exceeding thirty dollars and not exceeding forty dollars, fifteen cents.

"For orders exceeding forty dollars and not exceeding fifty dollars, eighteen cents.

"For orders exceeding fifty dollars and not exceeding sixty dollars, twenty cents.

"For orders exceeding sixty dollars and not exceeding seventy-five dollars, twenty-five cents.

"For orders exceeding seventy-five dollars and not exceeding one hundred dollars, thirty cents."

July 16, 1894.

28 Stat. L., 104.

Money orders, etc., may be destroyed after ten years. See note 4.

SEC. 4. The Secretary of the Treasury and the Postmaster-General shall cause to be destroyed in such manner as they may deem best all Money Order Statements rendered by Postmasters and all paid Money Orders and paid Postal Notes accompanying the same, now filed in the office of the Auditor of the Treasury for the Post Office Department, or which may hereafter be filed therein, after ten years shall have elapsed from the expiration of the period covered by such statements:

—how paid.

*Provided*, That the Postmaster-General upon evidence satisfactory to him, and under such special regulations as he shall prescribe, may cause payment to be made in the manner prescribed in sections four and eleven of the Act approved January twenty-seventh, eighteen hundred and ninety-four, of the amount of any Money Order remaining unpaid after the lapse of ten years from the date of its issue.

1894, Jan. 27, ch. 21, ss. 4, 11, pp. 167-169.

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*Note 4.*—See act regulating disposition of useless papers in Executive Departments, 1889, Feb. 16, ch. 171 (1 Supp. R. S., 644), and note thereon.

## PRIZE.

Sec.
4613. Application of provisions of Title.
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5310. Property taken on inland waters.
5441. Delaying or defrauding captor or claimant.

Title 54.

Application of provisions of title.
June 30, 1864, s. 33, v. 13, p. 315.

SEC. 4613. The provisions of this Title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States.

What are vessels of the Navy.
Ibid., s. 32.

SEC. 4614. The term "vessels of the Navy," as used in this Title, shall include all armed vessels officered and manned by the United States, and under the control of the Department of the Navy.

Duties of commanding officer upon making capture.
Ibid., s. 1, p. 306.

SEC. 4615. The commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the log-book, with all other documents, letters, and other papers found on board, and make an inventory of the same, and seal them up, and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found, and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court, as witnesses, the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting, the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize-master and prize-crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent, he shall select such port as he shall deem most convenient, in view of the interests of probable claimants, as well as of the captors. If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to such court, and subject to its order in the cause. [See sec. 1624, art. 15, p. 12.]

SEC. 4616. If any vessel of the United States shall claim to share in a prize, either as having made the capture, or as having been within signal distance of the vessel or vessels making the capture, the commanding officer of such vessel shall make out a written statement of his claim, with the grounds on which it is founded, the principal facts tending to show what vessels made the capture, and what vessels were within signal distance of those making the capture, with reasonable particularity as to times, distances, localities, and signals made, seen, or answered; and such statement of claim shall be signed by him and sent to the court in which proceedings shall be had, and shall be filed in the cause.

Statement of claim to share in prize.
Ibid., s. 2, p. 307.

SEC. 4617. The prize-master shall make his way diligently to the selected port, and there immediately deliver to a prize-commissioner the documents and papers, and the inventory thereof, and make affidavit that they are the same, and are in the same condition as delivered to him, or explaining any absence or change of condition therein, and that the prize-property is in the same condition as delivered to him, or explaining any loss or damage thereto; and he shall further report to the district attorney and give to him all the information in his possession respecting the prize and her capture; and he shall deliver over the persons sent as witnesses to the custody of the marshal, and shall retain the prize in his custody until it shall be taken therefrom by process from the prize-court.

Duties of prize master.
Ibid., s. 3.
See sec. 5441.

[Sections 4618–19–20 relate to libels, duties of district attorneys, etc.]

SEC. 4621. Any district court may appoint prize-commissioners, not exceeding three in number; of whom one shall be a retired naval officer, approved by the Secretary of the Navy, who shall receive no other compensation than his pay in the Navy, and who shall protect the interests of the captors and of the Department of the Navy in the prize-property; and at least one of the others shall be a member of the bar of the court, of not less than three years' standing, and acquainted with the taking of depositions.

Appointment of prize-commissioners.
June 30, 1864, s. 5, v. 13, p. 307.

SEC. 4622. The prize-commissioners, or one of them, shall receive from the prize-master the documents and papers, and inventory thereof, and shall take the affidavit of the prize-master required by section forty-six hundred and seventeen, and shall forthwith take the testimony of the witnesses sent in, separate from each other, on interrogatories prescribed by the court, in the manner usual in prize-courts; and the witnesses shall not be permitted to see the interrogatories, documents, or papers, or to consult with counsel, or with any persons interested, without special authority from the court; and witnesses who have the rights of neutrals shall be discharged as soon as practicable. The prize-commissioners shall also take depositions de bene esse of the prize-crew and others, at the request of the district attorney, on interrogatories prescribed by the court. They shall also, as soon as any prize-property comes within the district for adjudication, examine the same, and make an

Duties of prize commissioners.
Ibid., s. 6, p. 308.
See sec. 5441.

inventory thereof, founded on an actual examination, and report to the court whether any part of it is in a condition requiring immediate sale for the interests of all parties, and notify the district attorney thereof; and if it be necessary to the examination or making of the inventory that the cargo be unladen, they shall apply to the court for an order to the marshal to unlade the same, and shall, from time to time, report to the court anything relating to the condition of the property, or its custody or disposal, which may require any action by the court, but the custody of the property shall be in the marshal only. They shall also seasonably return into court, sealed and secured from inspection, the documents and papers which shall come to their hands, duly scheduled and numbered, and the other preparatory evidence, and the evidence taken de bene esse, and their own inventory of the prize-property; and if the captured vessel, or any of its cargo or stores, are such as in their judgment may be useful to the United States in war, they shall report the same to the Secretary of the Navy.

[Section 4623 defines the duty of the marshal.]

Appraisal, etc., of property taken for Government. Ibid., s. 27, p. 314.

SEC. 4624. Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement, and inventory shall be sent to the court in which proceedings are to be had; and if taken afterward, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize-property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.

Proceedings for adjudication where property is not sent in. Ibid., s. 28..

SEC. 4625. If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States, shall be deposited with the assistant treasurer in or nearest to that district, subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for adjudication in any district. And if in any case of capture no proceedings for adjudication are commenced within a reasonable time, any parties claiming the captured property may, in any district

court as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified.

Delivery of property on stipulation. Ibid., s. 26, p. 313.

SEC. 4626. No prize-property shall be delivered to the claimants on stipulation, deposit, or other security, except where there has been a decree of restitution and the captors have appealed therefrom, or where the court, after a full hearing on the preparatory proofs, has refused to condemn the property on those proofs, and has given the captors leave to take further proofs, or where the claimant of any property shall satisfy the court that the same has a peculiar and intrinsic value to him, independent of its market-value. In any of these cases, the court may deliver the property on stipulation or deposit of its value, if satisfied that the rights and interests of the United States and captors, or of other claimants, will not be prejudiced thereby; but a satisfactory appraisement shall be first made, and an opportunity given to the district attorney and naval prize-commissioner to be heard as to the appointment of appraisers. Any money deposited in lieu of stipulation, and all money collected on a stipulation, not being costs, shall be deposited with the assistant treasurer, in the same manner as proceeds of a sale.

When property may be sold. Ibid., s. 8, p. 308.

SEC. 4627. Whenever any prize-property is condemned, or at any stage of the proceedings is found by the court to be perishing, perishable, or liable to deteriorate or depreciate, or whenever the costs of keeping the same are disproportionate to its value, the court shall order a sale of such property; and whenever, after the return-day on the libel, all the parties in the interest who have appeared in the cause agree thereto, the court may make such order; and no appeal shall operate to prevent the making or execution of such order.

Mode of making sale. Ibid.

SEC. 4628. Upon a sale of any prize-property by order of the court, the Secretary of the Navy shall employ an auctioneer of known skill in the branch of business to which any sale pertains, to make the sale, but the sale shall be conducted under the supervision of the marshal, and the collecting and depositing of the gross proceeds shall be by the auctioneer or his agent. Before any sale the marshal shall cause full catalogues and schedules to be prepared and circulated, and a copy of each shall be returned by the marshal to the court in each cause. The marshal shall cause all sales to be advertised fully and conspicuously in newspapers ordered by the court, and by posters, and he shall, at least five days before the sale, serve notice thereof upon the naval prize commissioner, and the goods shall be open to inspection at least three days before the sale.

[Section 4629 authorizes transfer of property to another district for sale.]

Share of captors.
Ibid., s. 10, p. 309.
See secs. 4752 and 4759, Pensions.

SEC. 4630. The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels.

Distribution of proceeds to captors.
Prize-money allowed to officers serving as division commanders and fleet captains from April, 1861, and how paid.
R. S., sec. 4631, pars. 1, 2.
Ibid., s. 10, p. 309; June 8, 1874, ch. 256, v. 18, p. 63.
See notes 1, 2, and 3.

SEC. 4631. All prize-money adjudged to the captors shall be distributed in the following proportions:

First. To the commanding officer of a fleet or squadron, one-twentieth part of all prize-money awarded to any vessel or vessels under his immediate command.

Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander-in-chief of such fleet or squadron, a sum equal to one-fiftieth part of any prize-money awarded to a vessel of such division for a capture made while under his command, such fiftieth part to be deducted from the moiety due to the United States, if there be such moiety, otherwise from the amount awarded to the captors; but such fiftieth part shall not be in addition to any share which may be due to the commander of the division, and which he may elect to receive, as commander of a single ship making or assisting in the capture.

Third. To the fleet captain, one-hundredth part of all prize-money awarded to any vessel or vessels of the fleet or squadron in which he is serving, except in a case where the capture is made by the vessel on board of which he is

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*Note 1.*—The rate of pay which the officer was in receipt of *at the time the capture was made* is the measure of his allowance out of the proceeds; not the increased pay resulting from his promotion afterwards. Immaterial if his promotion gave him a title to the increased pay from and including the date of capture. A commander of a single ship is limited to one-tenth, although the amount would exceed that if paid according to his rank. It is the same if he was entitled to three-twentieths. (Op., XV, 64, Dec. 10, 1875, Pierrepont. *Albemarle* case. But see Op., XIV, 365, *post*.)

Prize is distributed according to the law existing at the date or time of the capture. The law regulating the distribution of prize-money is a conditional grant by Congress; as soon as the conditions are fulfilled the grant becomes absolute. (Op., XI, 102, Sept. 30, 1864, Bates.)

An officer commissioned to a higher grade, prior to a capture, although from delay or other causes the promotion had not reached him at the time, and he was on the prize-list in the lower capacity, is entitled to share in the higher grade if in the performance of the duties thereof. If he was entitled to pay in the higher grade, he was entitled to share accordingly in the prize. (Op., XIV, 365, Feb. 6, 1874, Williams. See also XIII, 413.)

An officer who usurps command of a vessel can not claim a share in prizes captured. "Commanding officer means an officer legally in command." In the construction of the prize act in England, the court held that the words "on board" meant only such persons as belonged to the vessel, and that being corporeally on board was not sufficient. (Op., XI, p. 147, Jan. 19, 1865, Speed.)

An officer absent from his command, for the purpose of attending to his private affairs, is not entitled to share in prizes captured during his absence. Although he may have attended to a certain piece of business while absent, or by the orders of a superior of the command, not having been detailed for that business and it not appearing that the detail of an officer from the fleet to attend to it was necessary, he is not entitled to share. (Op., XI, p. 327, Aug. 24, 1865, Speed. Temple's case.)

*Note 2.*—An act of June 8, 1874, chap. 256, v. 18, p. 63, provided that paragraphs 2 and 3 should apply to officers serving as commanders of divisions and fleet captains from April, 1861, and that their shares should be paid in the same manner as provided for division commanders in said paragraphs—the payments to be made out of the naval pension fund.

*Note 3.*—Prize money to *Wyoming* and *Takiang:* An act approved February 22, 1863, chap. 51, vol. 22, p. 421, provides for payment by the Secretary of the Treasury of $140,000 to the officers and crew, or their legal representatives, of the *Wyoming* and *Takiang* (latter manned from the *Jamestown*) for destruction of hostile vessels in the Straits of Simonoseki, etc., in 1863, to be distributed in the same manner as prize money.

serving at the time of such capture; and in such case he shall share, in proportion to his pay, with the other officers and men on board such vessel.

Fourth. To the commander of a single vessel, one-tenth part of all the prize-money awarded to the vessel under his command, if such vessel at the time of the capture was under the command of the commanding officer of a fleet or squadron, or a division, and three-twentieths if his vessel was acting independently of such superior officer.

Fifth. After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board, including the fleet-captain, and borne upon the books of the ship, in proportion to their respective rates of pay in the service.

What vessels are entitled to share. June 30, 1864, s. 10, v. 13, p. 309.

SEC. 4632. All vessels of the Navy within signal-distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize; and in case of vessels not of the Navy, none shall be entitled to share except the vessel or vessels making the capture; in which term shall be included vessels present at and rendering actual assistance in the capture.

What officers are entitled to share. Ibid. See note 4.

SEC. 4633. No commanding officer of a fleet or squadron shall be entitled to receive any share of prizes captured by any vessel or vessels not under his command, nor of such prizes as may have been captured by any vessels intended to be placed under his command, before they have acted under his orders. Nor shall the commanding officer of a fleet or squadron, leaving the station where he had command, have any share in the prizes taken by ships left on such station after he has gone out of the limits of his command, nor after he has transferred his command to his successor. No officer or other person who shall have been temporarily absent on duty from a vessel on the books of which he continued to be borne, while so absent, shall be deprived, in consequence of such absence, of any prize money to which he would otherwise be entitled. And he shall continue to share in the captures of the vessels to which he is attached, until regularly discharged therefrom.

Determination of shares. Ibid., s. 9.

SEC. 4634. Whenever a decree of condemnation is rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at

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*Note 4.*—A commander of a squadron is not entitled to share in prizes taken by a vessel thereof, after he had transferred the command to his successor, although the captures were made in pursuance of instructions issued by him before the transfer. (Op., X, p. 9, Mar. 4, 1864, Bates. Wilkes's claim.)

A flag-officer of a squadron is not entitled to the share of prize money accruing to the captain of his flag-ship from captures made by that ship while her captain was detached on account of illness, and the flag-officer was de facto in command of her. The usage of the naval service gave the command of the ship to the officer next in rank to the detached commander. If there was a commander of the capturing vessel in law or fact, within the terms of the statute of distribution, at the time the capture was made, he is entitled to the commander's share; if there was no such, then that share is part of the common fund, in which all concerned have a proportional right. (Idem.)

A vessel which arrives within the limits of a command to which it is to be attached, and the commander thereof reports by letter to the commander in chief for further instructions, which are given but not received until after certain captures have been made, was within the "immediate command" of the commanding officer of the fleet, who is entitled to share. (Op., XI, p. 94, Sept. 12, 1864. Claim of Admiral Lee.)

as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank, reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. The decree shall recite the amount of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors and one-half to the United States.

Bounty for persons on board vessels sunk or destroyed. Ibid., s. 11, p. 310.

SEC. 4635. A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture.

Costs and expenses. Ibid., s. 14.

SEC. 4639. All costs and all expenses incident to the bringing in, custody, preservation, insurance, sale, or other disposal of prize-property, when allowed by the court, shall be charged upon such property, and shall be paid from the proceeds thereof, unless the court shall decree restitution free from such charge.

Payment of expenses from prize fund. Ibid.

SEC. 4640. No payment shall be made for any prize-fund, except upon the order of the court. All charges for work and labor, materials furnished, or money paid, shall be supported by affidavit or vouchers. The court may, at any time, order the payment, from the deposit made with the assistant treasurer in the cause, of any costs or charges accrued and allowed. When the cause is finally disposed of, the court shall make its order or orders on the assistant treasurer to pay the costs and charges allowed and unpaid; and in case the final decree shall be for restitution, or in case there shall be no money subject to the order of the court in the cause, any cost or charges allowed by the

court, and not paid by the claimants, shall be a charge upon, and be paid out of, the fund for defraying the expenses of suits in which the United States is a party or interested.

Payment of prize money. Ibid., s. 15.

SEC. 4641. The net amount decreed for distribution to the United States, or to vessels of the Navy, shall be ordered by the court to be paid into the Treasury of the United States, to be distributed according to the decree of the court. The Treasury Department shall credit the Navy Department with each amount received to be distributed to vessels of the Navy; and the persons entitled to share therein shall be severally credited in their accounts with the Navy Department with the amounts to which they are respectively entitled. In case of vessels not of the Navy, and not controlled by any Department of the Government, the distribution shall be made by the court to the several parties entitled thereto, and the amounts decreed to them shall be divided between the owners and the ship's company, according to any written agreement between them, and in the absence of such agreement, one-half to the owners and one-half to the ship's company, according to their respective rates of pay on board; and the court may appoint a commissioner to make such distribution, subject to the control of the court, who shall make due return of his doings, with proof of actual payments by him, and who shall receive no other compensation, directly or indirectly, than such as shall be allowed him by the court. In case of vessels not of the Navy, but controlled by either Executive Department, the whole amount decreed to the captors shall be divided among the ship's company.

Distribution of bounty, salvage, etc. Ibid., s. 11, p. 310. See sec. 3689, Appropriations.

SEC. 4642. All ransom-money, salvage, bounty, or proceeds of condemned property, accruing or awarded to any vessel of the Navy, shall be distributed and paid to the officers and men entitled thereto in the same manner as prize-money, under the direction of the Secretary of the Navy.

Recaptures. Ibid., s. 29, p. 314. See note 5.

SEC. 4652. When any vessel or other property shall have been captured by any force hostile to the United States, and shall be recaptured, and it shall appear to the court that the same had not been condemned as prize before its

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*Note 5.*—Salvage is the compensation allowed to persons by whose voluntary assistance a ship at sea or her cargo or both have been saved in whole or in part from impending sea peril, or in recovering such property from actual peril or loss, as in cases of shipwreck, derelict, or recapture. Three elements are necessary to a valid salvage claim: 1. A marine peril; 2. Service voluntarily rendered when not required as an existing duty or from a special contract; 3. Success in whole or in part, or that the service rendered contributed to such success. Proof of success, to some extent, is as essential as proof of service; for if the property is not saved, or if it perishes, or in case of capture, if it is not retaken, no compensation will be allowed. Compensation as salvage is not viewed by the admiralty courts merely as pay on the principle of *quantum meruit*, or as a remuneration *pro opere et labore*, but as a reward given for perilous services voluntarily rendered, and as an inducement to mariners to embark in such dangerous enterprises to save life and property. (Voluntary sailors, if not successful, are entitled to nothing. When engaged to go out to the assistance of a vessel in distress they are to be paid according to their efforts, even though the labor and service may not prove beneficial to the vessel or cargo. The Undaunted, 1 Lush, 90.) (Otto, S. C., 101, p. 384, case of the Sabine.)

To constitute a *maritime derelict* the property at sea must not only be abandoned, but the abandonment must be without hope of recovery. (2 Kent's Com., 357, and cases cited.) And when such derelicts are found they are to be held, by the general rule of civilized countries, perquisites or *droits* of the admiralty, subject to be reclaimed by the owner, but without any other claim on the part of the finder than to his reasonable salvage remuneration cases cited.) What constitutes a reasonable

recapture, by any competent authority, the court shall award a meet and competent sum as salvage, according to the circumstances of each case. If the captured property belonged to the United States, it shall be restored to the United States, and there shall be paid from the Treasury of the United States the salvage, costs, and expenses ordered by the court. If the recaptured property belonged to persons residing within or under the protection of the United States, the court shall adjudge the property to be restored to its owners, upon their claim, on the payment of such sum as the court may award as salvage, costs, and expenses. If the recaptured property belonged to any person permanently resident within the territory and under the protection of any foreign prince, government, or state in amity with the United States, and by the law or usage of such prince, government, or state, the property of a citizen of the United States would be restored under like circumstances of recapture, it shall be adjudged to be restored to such owner, upon his claim, upon such terms as by the law or usage of such prince, government, or state would be required of a citizen of the United States under like circumstances of recapture; or when no such law or usage shall be known, it shall be adjudged to be restored upon the payment of such salvage, costs, and expenses as the court shall order. The whole amount awarded as salvage shall be decreed to the captors, and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize. Nothing in this Title shall be construed to contravene any treaty of the United States.

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salvage remuneration is, of course, a question for judicial determination in each case. (Op., XI, p. 2, Nov. 20, 1863, Bates.)

Officers and crews of public ships of the United States are not entitled to salvage, civil or military, as of complete legal right. It is against publicpolicy. Wirt (Op., July 22, 1824) said, "it was not demandable in the case of preservation of property of the United States, because the officers and crew have done no more than their duty." Attorney-General Johnson advised that it was allowable in a case of portable foreign property (Op., 20 June, 1849). The Supreme Court allowed it in the case of the Amistad (XV Peters, 518). The Secretary has the power to forbid the demand of it by any public ship under his orders. (Op., VII, p. 756, Cushing, July 8, 1856.)

Where a vessel at sea is in imminent danger, and a part of either vessel or cargo is voluntarily sacrificed to save the rest, and the sacrifice is successful, the portion saved must contribute pro rata to make the loss good. The direct and immediate consequences of involuntary stranding not subjects of general average; *after* stranding, to avert peril surrounding vessel and cargo, owners of cargo to contribute by way of general average proportion of expenses voluntarily incurred and sacrifices voluntarily made. Injury to vessel in act of stranding not a subject of general average. (Op., IX, p. 447, July 19, 1860, Black.)

Where a vessel put into a harbor "in a furious storm," leaking, was run ashore and wrecked through no fault or misconduct on the part of the master and crew, the owners are under no legal obligation to remove the wreck, although it may be a serious obstruction to navigation. (Op., XV, p. 71. See also p. 285, as to the authority of the Government as to the removal of wrecks which are obstructions.)

The word "wrecked," as used in section 4136 Revised Statutes (concerning the registering of vessels) is applicable to a vessel which is disabled and rendered unfit for navigation, whether by the wind, waves, stranding, fire, explosion of boilers, or other casualty. (Op., XV, p. 402, Dec. 5, 1877.)

The officers and crew of a vessel in the naval marine of the United States are entitled to salvage for saving a French ship, the objection that Government vessels are not thus entitled being invalid. The rule is universal in the United States, that salvage rendered by the naval marine is to be compensated, in like manner as that rendered by the private marine. (Op., V, p. 116, June 20, 1849, Johnson. See also Op., XII, p. 289, on the subject.)

It is well settled that where a vessel is voluntarily run ashore to prevent a total loss of vessel and cargo, but is afterwards recovered so as to be able to perform her voyage, the loss resulting from the stranding is to be made good by general average contribution. The contribution applies to the Government as well as to individuals. (C. C., XV, p. 392.)

SEC. 5310. No property seized or taken upon any of the inland waters of the United States by the naval forces thereof shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts.

Title 69.

Property taken on inland waters. July 2, 1864, s. 7, v. 13, p. 377.

SEC. 5441. Every person who willfully does any act or aids or advises in the doing of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment not more than five years, or both.

Title 70, chap. 5.

Delaying or defrauding captor or claimant, etc., of prize property. June 30, 1864, s. 31, v. 13, p. 315. See secs. 4613–4652.

## QUARANTINE AND BOARD OF HEALTH.

Sec.
4792. State health laws to be observed by United States officers.
Act Aug. 1, 1888. Quarantine service established.
Act Feb. 15, 1893. Vessels from infected ports entering United States; penalty.
—— Marine Hospital and customs-officers to enforce quarantine laws.
—— Rules for vessels from foreign ports.
—— Sanitary reports to be made by consuls.
—— Inspection, etc., on arrival.
Act Mar. 3, 1893. Appropriation for preventing epidemics.

SEC. 4792. The quarantine and other restraints established by the health-laws of any State, respecting any vessels arriving in, or bound to, any port or district thereof, shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several revenue-cutters, and by the military officers commanding in any fort or station upon the sea-coast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health-laws, according to their respective powers and within their respective precincts, and as they shall be directed, from time to time, by the Secretary of the Treasury. But nothing in this Title shall enable any State to collect a duty of tonnage or impost without the consent of Congress.

Title 58.

State health laws to be observed by United States officers, etc. Feb. 23, 1799, s. 1, v. 1, p. 619.

That whenever any person shall trespass upon the grounds belonging to any quarantine reservation, or whenever any person, master, pilot, or owner of a vessel entering any port of the United States, shall so enter in violation of section one of the act entitled "An act to prevent the introduction of contagious or infectious diseases into the United States," approved April twenty-ninth, eighteen hundred and seventy-eight, or in violation of the quarantine regulations framed under said act, such person, trespassing, or such master, pilot, or other person in command of a vessel shall, upon conviction thereof, pay a fine of not more than three hundred dollars, or be sentenced to imprisonment for a period of not more than thirty days, or shall be punished by both fine and imprisonment, at the discretion of the court.

Aug. 1, 1888.

25 Stat. L., 355. Quarantine service. Punishment, etc., upon quarantine grounds. 1878, Apr. 29, ch. 66, p. 157; 1890, Mar. 27, ch. 51, p. 709.

—duty of district attorneys relating to.

And it shall be the duty of the United States attorney in the district where the misdemeanor shall have been committed to take immediate cognizance of the offense, upon report made to him by any medical officer of the Marine Hospital Service, or by any officer of the customs service, or by any State officer acting under authority of section five of said act.

Quarantine stations established.
1888, Mar. 5, ch. 20, p. 581.

SEC. 2. That as soon after the passage of this act as practicable, the Secretary of the Treasury shall cause to be established, in addition to the quarantine established by the act approved March fifth, eighteen hundred and eighty-eight, quarantine stations as follows:

One at the mouth of the Delaware Bay; one near Cape Charles, at the entrance of the Chesapeake Bay; one on the Georgia coast; one at or near Key West; one in San Diego Harbor; one in San Francisco Harbor; and one at or near Port Townsend, at the entrance to Puget Sound; and the said quarantine stations when so established shall be conducted by the Marine Hospital Service under regulations framed in accordance with the act of April twenty-ninth, eighteen hundred and seventy-eight.

Feb. 15, 1893.
27 Stat. L., 449.
Vessels from foreign ports not to enter in violation of this act or State health laws
See note 1.

That it shall be unlawful for any merchant ship or other vessel from any foreign port or place to enter any port of the United States except in acordance with the provisions of this act and with such rules and regulations of State and municipal health authorities as may be made in pursuance of, or consistent with, this act; and any such vessel which

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Review of laws relating to public health.

*Note 1.*—Provisions relating to the public health appear in R. S., title 58, secs. 4792–4800. As to State quarantine laws, see 118 U. S., 455.

1878, April 29, ch. 66 (1 Supp. R. S., 157, and 20 Stat. L., 37), provides regulations to prevent the introduction of contagious or infectious diseases into the United States. Secs. 2, 3, 4 of that act are expressly repealed by 1879, June 2, ch. 11, s. 9 (21 Stat. L., 7), and were for that reason omitted from the first volume of the Supplement.

The Attorney-General, however, in an opinion dated September 1, 1892, holds that the expiration of the latter act by the limitation of its own sec. 10 has the effect of reviving the repealed sections of the act of 1878, notwithstanding the provisions of R. S., sec. 12. The act of 1878 is therefore here given in full:

Apr. 29, 1878.
20 Stat. L., 37.

AN ACT to prevent the introduction of contagious or infectious diseases into the United States.

Vessels from infected ports entering United States, subject to State quarantine laws and regulations.

*Be it enacted, &c.*, That no vessel or vehicle coming from any foreign port or country where any contagious or infectious disease may exist, and no vessel or vehicle conveying any person or persons, merchandise or animals, affected with any infectious or contagious disease, shall enter any port of the United States or pass the boundary line between the United States and any foreign country, contrary to the quarantine laws of any one of said United States, into or through the jurisdiction of which said vessel or vehicle may pass, or to which it is destined, or except in the manner and subject to the regulations to be prescribed as hereinafter provided.

Consuls to report vessels leaving infected ports.

SEC. 2. That whenever any infectious or contagious disease shall appear in any foreign port or country, and whenever any vessel shall leave any infected foreign port, or, having on board goods or passengers coming from any place or district infected with cholera or yellow fever, shall leave any foreign port, bound for any port in the United States, the consular officer, or other representative of the United States at or nearest such foreign port shall immediately give information thereof to the Supervising Surgeon-General of the Marine Hospital Service, and shall report to him the name, the date of departure, and the port of destination of such vessel;

and shall also make the same report to the health officer of the port of destination in the United States, and the consular officers of the United States shall make weekly reports to him of the sanitary condition of the ports at which they are respectively stationed;

Surgeon-General of Marine-Hospital Service to execute act.

and the said Surgeon-General of the Marine-Hospital Service shall, under the direction of the Secretary of the Treasury, be charged with the execution of the provisions of this act, and shall frame all needful rules and regulations for that purpose, which rules and regulations, shall be subject to the approval of the President, but such rules and regulations shall not conflict with or impair any sanitary or quaran-

shall enter, or attempt to enter, a port of the United States in violation thereof shall forfeit to the United States a sum, to be awarded in the discretion of the court, not exceeding five thousand dollars, which shall be a lien upon said vessel, to be recovered by proceedings in the proper district court of the United States. —penalty.

In all such proceedings the United States district attorney for such district shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States. Proceedings.

SEC. 2. That any vessel at any foreign port clearing for any port or place in the United States shall be required to obtain from the consul, vice-consul, or other consular officer of the United States at the port of departure, or from the medical officer where such officer has been detailed by the President for that purpose, a bill of health, in duplicate, in the form prescribed by the Secretary of the Treasury, setting forth the sanitary history and condition of said vessel, and that it has in all respects complied with the rules and Bill of health to be obtained from consul. 1894, Aug. 18, ch. 300, p. 334.

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tine laws or regulations of any State or municipal authorities now existing or which may hereafter be enacted.

SEC. 3. That it shall be the duty of the medical officers of the Marine-Hospital Service and of customs-officers to aid in the enforcement of the national quarantine rules and regulations established under the preceding section; but no additional compensation shall be allowed said officers by reason of such services as they may be required to perform under this act, except actual and necessary traveling expenses. Marine-Hospital and customs officers to enforce quarantine laws.

SEC. 4. That the Surgeon-General of the Marine-Hospital Service shall, upon receipt of information of the departure of any vessel, goods, or passengers from infected places to any port in the United States, immediately notify the proper State or municipal and United States officer or officers at the threatened port of destination of the vessel, and shall prepare and transmit to the medical officers of the Marine Hospital Service, to collectors of customs, and to the State and municipal health authorities in the United States, weekly abstracts of the consular sanitary reports and other pertinent information received by him. Surgeon-General of Marine Hospital to notify collectors and to transmit weekly abstracts of sanitary reports to certain officers.

SEC. 5. That wherever, at any port of the United States, any State or municipal quarantine system may now, or may hereafter exist, the officers or agents of such system shall, upon the application of the respective State or municipal authorities, be authorized and empowered to act as officers or agents of the national quarantine system, and shall be clothed with all the powers of United States officers for quarantine purposes, but shall receive no pay or emoluments from the United States. Officers of State quarantine system may act as officers of national system, when.

At all other ports where, in the opinion of the Secretary of the Treasury, it shall be deemed necessary to establish quarantine, the medical officers or other agents of the Marine-Hospital Service shall perform such duties in the enforcement of the quarantine rules and regulations as may be assigned them by the Surgeon-General of that service under this act: Duties of officers of Marine-Hospital Service. R. S., secs. 4801-4806; 1890, March 27, ch. 51, s. 2 (1 Supp. R. S., 710).

*Provided*, That there shall be no interference in an manner with any quarantine laws or regulations as they now exist or may hereafter be adopted under State laws. State laws not to be interfered with. R. S., sec. 4791; 118 U. S., 464.

SEC. 6. That all acts or parts of acts inconsistent with this act be, and the same are hereby, repealed. Repeal.

A National Board of Health was created by 1879, March 3, ch. 202 (1 Supp. R. S., 261, and 20 Stat. L., 484). This Board, after failing for a number of years to receive any appropriations for current salaries and expenses, is abolished by sec. 9 of this act. The several acts relating to it are summarized in 143 U. S., 578.

1879, June 14, Res. No. 6 (1 Supp. R. S., 273), authorizes the Secretary of the Navy to place vessels or hulks not required for other uses at the disposal of quarantine authorities.

1888, August 1, ch. 727 (1 Supp. R. S., 600), provides punishment for violating quarantine regulations, and for the establishment of additional quarantine stations.

1890, March 27, ch. 51 (1 Supp. R. S., 709), provides against the introduction of contagious diseases from one State to another, and for the punishment of certain offenses against the quarantine laws.

"Persons suffering from a loathsome or a dangerous contagious disease" are excluded from entering the United States by 1891, March 3, ch. 551, s. 1 (1 Supp. R. S., 934).

regulations in such cases prescribed for securing the best sanitary condition of the said vessel, its cargo, passengers, and crew;

—contents.

and said consular or medical officer is required, before granting such duplicate bill of health, to be satisfied that the matters and things therein stated are true;

Fees of consul.

and for his services in that behalf he shall be entitled to demand and receive such fees as shall by lawful regulation be allowed, to be accounted for as is required in other cases.

Medical officer may be detailed at consulate.

The President, in his discretion, is authorized to detail any medical officer of the Government to serve in the office of the consul at any foreign port for the purpose of furnishing information and making the inspection and giving the bills of health hereinbefore mentioned.

Penalty for vessel clearing without bill of health.

Any vessel clearing and sailing from any such port without such bill of health, and entering any port of the United States, shall forfeit to the United States not more than five thousand dollars, the amount to be determined by the court, which shall be a lien on the same, to be recovered by proceedings in the proper district court of the United States.

Proceedings.

In all such proceedings the United States district attorney for such district shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

Marine-Hospital Service to assist local health boards to enforce rules, etc.

SEC. 3. That the Supervising Surgeon-General of the Marine Hospital Service shall, immediately after this act takes effect, examine the quarantine regulations of all State and municipal boards of health, and shall, under the direction of the Secretary of the Treasury, co-operate with and aid State and municipal boards of health in the execution and enforcement of the rules and regulations of such boards and in the execution and enforcement of the rules and regulations made by the Secretary of the Treasury to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia;

Rules to operate uniformly.

and all rules and regulations made by the Secretary of the Treasury shall operate uniformly and in no manner discriminate against any port or place;

Additional rules, etc., by Secretary of Treasury where local regulations are inadequate.

and at such ports and places within the United States as have no quarantine regulations under State or municipal authority, where such regulations are, in the opinion of the Secretary of the Treasury, necessary to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and at such ports and places within the United States where quarantine regulations exist under the authority of the State or municipality which, in the opinion of the Secretary of the Treasury, are not sufficient to prevent the introduction of such diseases into the United States, or into one State or Territory or the District of Columbia from another State or Territory or the District

of Columbia, the Secretary of the Treasury shall, if in his judgment it is necessary and proper, make such additional rules and regulations as are necessary to prevent the introduction of such diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and when said rules and regulations have been made they shall be promulgated by the Secretary of the Treasury and enforced by the sanitary authorities of the States and municipalities, where the State or municipal health authorities will undertake to execute and enforce them; but if the State or municipal authorities shall fail or refuse to enforce said rules and regulations the President shall execute and enforce the same and adopt such measures as in his judgment shall be necessary to prevent the introduction or spread of such diseases, and may detail or appoint officers for that purpose.

—how enforced.

Rules for vessels from foreign ports.

The Secretary of the Treasury shall make such rules and regulations as are necessary to be observed by vessels at the port of departure and on the voyage, where such vessels sail from any foreign port or place to any port or place in the United States, to secure the best sanitary condition of such vessel, her cargo, passengers, and crew; which shall be published and communicated to and enforced by the consular officers of the United States.

—to be posted in consulate.

None of the penalties herein imposed shall attach to any vessel or owner or officer thereof until a copy of this act, with the rules and regulations made in pursuance thereof, has been posted up in the office of the consul or other consular officer of the United States for ten days, in the port from which said vessel sailed; and the certificate of such consul or consular officer over his official signature shall be competent evidence of such posting in any court of the United States.

Marine-Hospital Service to perform duties under this act, obtain information, etc.

SEC. 4. That it shall be the duty of the supervising Surgeon-General of the Marine Hospital Service, under the direction of the Secretary of the Treasury, to perform all the duties in respect to quarantine and quarantine regulations which are provided for by this act, and to obtain information of the sanitary condition of foreign ports and places from which contagious and infectious diseases are or may be imported into the United States,

Sanitary reports to be made by consuls.

and to this end the consular officer of the United States at such ports and places as shall be designated by the Secretary of the Treasury shall make to the Secretary of the Treasury weekly reports of the sanitary condition of the ports and places at which they are respectively stationed, according to such forms as the Secretary of the Treasury shall prescribe;

Weekly domestic sanitary reports.

and the Secretary of the Treasury shall also obtain, through all sources accessible, including State and municipal sanitary authorities throughout the United States, weekly reports of the sanitary condition of ports and places within the United States, and shall prepare, publish, and transmit to collectors of customs and to State and municipal health officers and other sanitarians weekly abstracts

Publication and distribution.

of the consular sanitary reports and other pertinent information received by him,

Climatic, etc., conditions.

and shall also, as far as he may be able, by means of the voluntary co-operation of State and municipal authorities, of public associations, and private persons, procure information relating to the climatic and other conditions affecting the public health,

Annual report.

and shall make an annual report of his operations to Congress, with such recommendations as he may deem important to the public interest.

Rules to secure sanitary conditions of vessels, etc.

SEC. 5. That the Secretary of the Treasury shall from time to time issue to the consular officers of the United States and to the medical officers serving at any foreign port, and otherwise make publicly known, the rules and regulations made by him, to be used and complied with by vessels in foreign ports, for securing the best sanitary conditions of such vessels, their cargoes, passengers, and crew, before their departure for any port in the United States, and in the course of the voyage;

Inspection, etc., on arrival.

and all such other rules and regulations as shall be observed in the inspection of the same on the arrival thereof at any quarantine station at the port of destination, and for the disinfection and isolation of the same, and the treatment of cargo and persons on board, so as to prevent the introduction of cholera, yellow fever, or other contagious or infectious diseases;

Vessels to enter only upon health officer's certificate.

and it shall not be lawful for any vessel to enter said port to discharge its cargo, or land its passengers, except upon a certificate of the health officer at such quarantine station certifying that said rules and regulations have in all respects been observed and complied with, as well on his part as on the part of the said vessel and its master, in respect to the same and to its cargo, passengers, and crew;

Master to deliver papers to customs officer.

and the master of every such vessel shall produce and deliver to the collector of customs at said port of entry, together with the other papers of the vessel, the said bills of health required to be obtained at the port of departure and the certificate herein required to be obtained from the health officer at the port of entry;

Bills of health, force and effect.

and that the bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

Infected vessels to be sent to nearest quarantine station.

SEC. 6. That on the arrival of an infected vessel at any port not provided with proper facilities for treatment of the same, the Secretary of the Treasury may remand said vessel, at its own expense, to the nearest national or other quarantine station, where accommodations and appliances are provided for the necessary disinfection and treatment of the vessel, passengers, and cargo;

Certificate after treatment.

and after treatment of any infected vessel at a national quarantine station, and after certificate shall have been given by the United States quarantine officer at said station

that the vessel, cargo, and passengers are each and all free from infectious disease, or danger of conveying the same, said vessel shall be admitted to entry to any port of the United States named within the certificate.

Local quarantine.

But at any ports where sufficient quarantine provision has been made by State or local authorities the Secretary of the Treasury may direct vessels bound for said ports to undergo quarantine at said State or local station.

Immigration may be suspended during existence of contagious diseases.

SEC. 7. That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera or other infectious or contagious diseases in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded in the interest of the public health, the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary.

Compensation for use of State buildings, etc.

SEC. 8. That whenever the proper authorities of a State shall surrender to the United States the use of the buildings and disinfecting apparatus at a State quarantine station, the Secretary of the Treasury shall be authorized to receive them and to pay a reasonable compensation to the State for their use, if, in his opinion, they are necessary to the United States.

National Board of Health abolished.

Repeal of 1879, Mar. 3, ch. 202 (1 Supp. R. S., 261).

SEC. 9. That the act entitled "An act to prevent the introduction of infectious or contagious diseases into the United States, and to establish a national board of health," approved March third, eighteen hundred and seventy nine, be, and the same is hereby, repealed.

—property of, to be obtained.

And the Secretary of the Treasury is directed to obtain possession of any property, furniture, books, paper, or records belonging to the United States which are not in the possession of an officer of the United States under the Treasury Department which were formerly in the use of the National Board of Health or any officer or employee thereof.

Mar. 3, 1883, v. 22, p. 613. Sundry civil act.

The President of the United States is hereby authorized, in case of a threatened or actual epidemic, to use a sum, not exceeding one hundred thousand dollars, out of any money in the Treasury not otherwise appropriated, in aid of State and local boards or otherwise, in his discretion, in preventing and suppressing the spread of the same and maintaining quarantine at points of danger.

Mar. 3, 1893.

Chap. 208.

Permanent appropriation for preventing epidemics, to be expended in discretion of President,

[*Par.* 7.] The President of the United States is hereby authorized, in case of threatened or actual epidemic of cholera, yellow fever, or smallpox, to use the unexpended balance of the sums appropriated and reappropriated by the sundry civil appropriation act approved August fifth, eighteen hundred and ninety-two, or so much thereof as may be necessary, in aid of State and local boards, or otherwise, in his discretion, in preventing and suppressing the

See notes 2 and 3.

spread of the same; and in such emergency in the execution of any quarantine laws which may be then in force, and the additional sum of nine hundred thousand dollars is hereby appropriated for the same purpose to be immediately available. * * *

*Note 2.*—This act reappropriated the unexpended balance of a former appropriation and $100,000 additional (27 Stat. L., 367).

*Note 3.*—Very important changes in the quarantine laws are made by 1893, Feb. 15, ch. 114, p. 82. See the notes thereon.

## RAILROADS AND TELEGRAPHS.

### RAILROADS.

Sec.
5258. Interstate communication.
5260. Payments to be withheld from certain roads.
5261. Roads may bring suit.
—— Sundry provisions.
Act June 25, 1892. Forfeited railroad grants.
—— Right of settlers to purchase.
Act Dec. 12, 1893. Time for purchasing.

Title 64.

Interstate communication. June 15, 1866. ss. 1, 2, v. 14, p. 66.

SEC. 5258. Every railroad company in the United States, whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its roads, boats, bridges, and ferries, all passengers, troops, government supplies, mails, freight and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination. But this section shall not affect any stipulation between the Government of the United States and any railroad company for transportation or fares without compensation, nor impair or change the conditions imposed by the terms of any act granting lands to any such company to aid in the construction of its road, nor shall it be construed to authorize any railroad company to build any new road or connection with any other road without authority from the State in which such railroad or connection may be proposed. And Congress may at any time alter, amend, or repeal this section.

Secretary of the Treasury to withold payment to certain railroads. Mar. 3, 1873, s. 2, v. 17, p. 508; *June* 22, 1874, v. 18, p. 200.

SEC. 5260. The Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been re-imbursed, together with the five per centum of net earnings due and unapplied, as provided by law.

Companies may sue in Court of Claims. Mar. 3, 1873, s. 2, v. 17, p. 508. See note 1.

SEC. 5261. Any such company may bring suit in the Court of Claims to recover the price of such freight and transportation, and in such suit the right of such company to recover the same upon the law and the facts of the case

*Note 1.*—An act approved July 12, 1876, chap. 179, v. 19, p. 78, regulates compensation for carrying mails over land-grant roads.

An act approved March 3, 1879, chap. 183, v. 20, p. 410, provides for the adjustment of accounts, for transportation of the Army, etc., by certain railroads, subject to the provisions of this section.

An act approved June 19, 1878, chap. 316, v. 20, p. 109, established the office of Auditor of Railroads and contains sundry provisions relative to his duties, etc.

The second section of the act of May 7, 1878, chap. 96, v. 20, p. 56, provides that the

shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them; and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business.

Mar. 3, 1875.

18 Stat. L., 452. Supp. R. S., p. 81.

Actual travelling expenses only to officers and employees, except marshals, district attorneys, and clerks of courts.

R. S., secs. 74, 1273, 1289, 1290, 1566, 3157.

See note 2.

[*Par.* 1.] That hereafter only actual travelling expenses shall be allowed to any person holding employment or appointment under the United States, except marshals, district attorneys, and clerks of the courts of the United States and their deputies; and all allowances for mileages and transportation in excess of the amount actually paid, except as above excepted, are hereby declared illegal; and no credit shall be allowed to any of the disbursing-officers of the United States for payment or allowances in violation of this provision. * *

Land-grant railroads not to be paid for transportation of property, troops, officers, etc., of the United States. 20 A. G. Op., p. 11.

Aug. 5, 1882, ch. 390, par. 1.

[*Par.* 2.] That no money shall hereafter be paid to any railroad company for the transportation of any property or troops of the United States over any railroad which in whole or in part was constructed by the aid of a grant of public land on the condition that such railroad should be a public highway for the use of the Government of the United States free from toll or other charge, or upon any other conditions for the use of such road, for such transportation; nor shall any allowance be made for the transportation of officers of the Army over any such road when on duty and under orders as military officers of the United States.

—may bring suits therefor in Court of Claims with right of appeal.

R. S., secs. 707, 708, 1059.

15 C. Cls., 126, 428; 16 Opins., 605

But nothing herein contained shall be construed as preventing any such railroad from bringing a suit in the Court of Claims for the charges for such transportation, and recovering for the same if found entitled thereto by virtue of the laws in force prior to the passage of this act; provided that the claim for such charges shall not have been barred by the statute of limitations at the time of bringing the suit, and either party shall have the right of appeal to the Supreme Court of the United States;

—certain roads exempt from these provisions.

*And provided further*, That the foregoing provision shall not apply for the current fiscal year, nor thereafter, to roads where the sole condition of transportation is that the com-

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whole amount of compensation due to certain railroads therein mentioned, for services rendered to the Government, shall be retained by the United States, one-half thereof to be applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it to each of the corporations, and the other half to be turned into the sinking fund provided for in said act.

An act approved June 22, 1874, chap. 414, vol. 8, p. 200, directed the Secretary of the Treasury to require payment of the railroad companies of all sums of money due, or to become due, the United States for the five per centum of the net earnings provided for by the act of July 1, 1862, chap. 120, v. 12, p. 489, or by any other acts, for the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and in case of their refusal to pay, to certify the fact to the Attorney-General for suit.

*Note 2.*—This provision, without the word "hereafter," and without the exception appearing herein, first appeared in 1874, June 16, ch. 285 (18 Stat. L., 72). It is thus superseded by this act, and is consequently omitted from this volume, although amendments made by 1875, ch. 95, and 1876, ch. 159 (cited below), refer to the act of 1874 instead of to this act. Changes of law are made by 1875, Feb. 20, ch. 95, sec. 7, *ante*, p. 66, allowing mileage to judicial officers, as in this act; 1876, June 30, ch. 159, par. 1, allowing mileage to naval officers (amended by 1882, Aug. 5, ch. 391, par. 5, repealing mileage for travel abroad); and 1876, July 24, ch. 226, sec. 2, allowing mileage to army officers, regulated by 1883, Mar. 3, ch. 93, par. 2; 1890, June 13, ch. 429, par. 7 (see note thereto), and 1890, Sept. 19, ch. 907, sec. 15; and 1878, June 11, ch. 181, sec. 1, and 1879, Feb. 14, chap. 68, par. 2, allowing mileage to Board of Visitors to Military and Naval Academies.

pany shall not charge the Government higher rates than they do individuals for like transportation, and when the Quartermaster-General shall be satisfied that this condition has been faithfully complied with. * *

Supp. R. S., v. 2, p. 599.
Transportation of the Navy and Marine Corps on aided railroads.
March 3, 1879, ch. 183, par. 5 (1 Supp. R. S., 254).
See note 1.

That the provisions of the clause contained in the Act of Congress approved March third, eighteen hundred and seventy-nine, authorizing the Secretary of the Treasury to make such entries upon the books of the Department as will carry to the credit of certain railroad companies named in said Act amounts earned or to be earned by them during each fiscal year on account of transportation of the Army and transportation of the mails be, and the same are hereby, extended and made applicable to the transportation of the Navy and the Marine Corps. * *

## TELEGRAPHS.

Sec.
5266. Government to have priority in transmission of messages.
5267. Government entitled to purchase lines.
5268. Acceptance of obligation to be filed.
5269. Penalty for refusal to transmit dispatches.
Act June 23, 1874. Destroying telegraph lines.
Act Feb. 4, 1874. Departmental telegraph.

Title 65.

Government to have priority in transmission of messages.
July 24, 1866, s. 2, v. 14, p. 221; June 8, 1872, s. 17, v. 17, p. 287; June 10, 1872, s. 1, v. 17, p. 366,
See note 2.

SEC. 5266. Telegrams between the several Departments of the Government and their officers and agents, in their transmission over the lines of any telegraph company to which has been given the right of way, timber, or station lands from the public domain shall have priority over all other business, at such rates as the Postmaster-General shall annually fix. And no part of any appropriation for the several Departments of the Government shall be paid to any company which neglects or refuses to transmit such telegrams in accordance with the provisions of this section.

Government entitled to purchase lines.
July 24, 1866, s. 3, v. 14, p. 221.

SEC. 5267. The United States may, for postal, military, or other purposes, purchase all the telegraph lines, property, and effects of any or all companies acting under the provisions of the act of July twenty-fourth, eighteen hundred and sixty-six, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," or under this Title, at an appraised value, to be ascertained by five competent, disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

Acceptance of obligation to be filed.
Ibid., s. 4.

SEC. 5268. Before any telegraph company shall exercise any of the powers or privileges conferred by law such company shall file their written acceptance with the Post-

*Note 1.*—See various provisions relating to naval accounts: R. S., §§ 283, 3673, 3676, and 3678; 1878, June 19, ch. 312 (1 Supp. R. S., 194); 1889, March 2, ch. 371 (1 Supp. R. S., 678); 1891, March 2, ch. 494 par. 1 (1 Supp. R. S., 900); 1893, March 3, ch. 212, par. 5, *ante*, p. 130; 1896, June 10, ch. 399 (29 Stat. L., 370).

*Note 2.*—The Postmaster-General in his circular fixing rates for the fiscal year ending June 30, 1883, says: "All officers of the United States Government should indorse upon official messages transmitted by them the words 'official business,' and should report to the Postmaster-General any charges in excess of the rates." (See Op., XIV, 63, 123, 173, 313; XVI, 353; XV, 354, 579, regarding the transmission of messages over lines.)

master-General of the restrictions and obligations required by law.

Penalty for refusal to transmit dispatches. June 10, 1872, s. 1, v. 17, p. 366; Feb. 20, 1877, ch. 63, v. 19, p. 232; Feb. 27, 1877, ch. 69, v. 19, p. 252.

SEC. 5269. Whenever any telegraph company, after having filed its written acceptance with the Postmaster-General of the restrictions and obligations required by the act approved July twenty-fourth, eighteen hundred and sixty-six, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," or by this Title, shall, by its agents or employés, refuse or neglect to transmit any such telegraphic communications as are provided for by the aforesaid act, or by this Title, or by the provisions of section two hundred and twenty-one, Title "THE DEPARTMENT OF WAR," authorizing the Secretary of War to provide for taking meterological observations at the military stations and other points of the interior of the continent, and for giving notice on the northern lakes and seaboard of the approach and force of storms, such telegraph company shall be liable to a penalty of not less than one hundred dollars and not more than one thousand dollars for each such refusal or neglect, to be recovered by an action or actions at law in any district court of the United States.

June 23, 1874.

Wilfully and maliciously destroying works or property of national telegraph lines. June 23, 1874, v. 18, p. 250. See note 2.

That any person or persons who shall wilfully or maliciously injure or destroy any of the works or property or material of any telegraphic line constructed and owned, or in process of construction, by the United States, or that may be hereafter constructed and owned or occupied and controlled by the United States, or who shall wilfully or maliciously interfere in any way with the working or use of any such telegraphic line, or who shall wilfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such telegraphic line, shall be deemed guilty of a misdemeanor, and, on conviction thereof in any district court of the United States having jurisdiction of the same, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or with imprisonment for a term not exceeding three years, or with both, in the discretion of the court.

Feb. 4, 1874.

Capitol and departmental telegraph. Feb. 4, 1874, v. 18, p. 14.

That the lines of telegraph, connecting the Capitol with the various Departments in Washington, constructed under and by virtue of the act of Congress approved March third, eighteen hundred and seventy-three, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," be, and the same are hereby, placed under the supervision of the officer in charge of the public buildings

*Note 2.*—Section 223 of the Revised Statutes authorizes the Secretary of War to establish signal stations at light-houses and at such of the life-saving stations as may be suitably located for the purpose, and to connect the same with such points as may be necessary for the proper discharge of the signal service by means of a suitable telegraph line in cases where no lines are in operation, to be constructed, maintained, and worked under the direction of the chief signal officer of the Army or the Secretary of War and the Secretary of the Treasury. Subsequent acts provide for the construction, under the Secretary of War, of military telegraph lines, and that private dispatches of lawful nature may be transmitted over them, whenever the same are not needed for public use, at reasonable rates, not to exceed the usual rates charged by private telegraph companies—the proceeds thereof to be accounted for and paid into the Treasury of the United States. (See v. 18, p. 51, and v. 20, p. 206.)

and grounds; and that the said officer be authorized and empowered to make rules and regulations for the working of said lines. And the Secretary or Head of each Executive Department, and the Congressional Printer, are hereby authorized to detail one person from their present force of employees to operate the instruments in said Departments and printing office, and each House of Congress may provide for the employment of an operator in their respective wings of the Capitol, at a compensation not exceeding one hundred dollars per month, during the sessions of Congress.

Mar. 7, 1874.

Mar. 7, 1874, v. 18, p. 20. See note 3.

*Provided*, That said lines of telegraph shall be for the use only of Senators, Members of Congress, Judges of the United States courts, and officers of Congress and of the Executive Departments, and solely on public business.

## RESERVED TIMBER LANDS.

Sec.
2458. Live-oak and red-cedar lands.
2459. Selection of live-oak and red-cedar tracts.
2460. Protection of live-oak and red-cedar timber.
2461. Cutting or destruction of live oak or red cedar, penalty.
2462. Vessels employed in carrying away live oak and red cedar, forfeiture of.
Sec.
Act Aug. 4, 1892. Sale of timber in public land States.
2463. Clearance of vessels laden with live oak, prosecution of depredators.
4205. Duties of collectors of customs.
5388. Depredations on timber lands.
Act Mar. 3, 1875. Protection of shade trees, fences, etc.

Title 32, chap. 11.

Live-oak and red-cedar lands. Mar. 1, 1817, s. 1, v. 3, p. 347; May 15, 1820, v. 3, p. 607; Mar. 3, 1827, s. 3, v. 4, p. 242.

SEC. 2458. The Secretary of the Navy is authorized, under the direction of the President, to cause such vacant and unappropriated lands of the United States as produce the live-oak and red-cedar timbers to be explored, and selection to be made of such tracts or portions thereof, where the principal growth is of either of such timbers, as in his judgment may be necessary to furnish for the Navy a sufficient supply of the same.

Selection of live-oak and red-cedar tracts. Mar. 1, 1817, s. 1, v. 3, p. 347.

SEC. 2459. The President is authorized to appoint surveyors of public lands, who shall perform the duties prescribed in the preceding section, and report to him the tracts by them selected, with the boundaries ascertained and accurately designated by actual survey of water-courses; and the tracts of land thus selected with the approbation of the President shall be reserved, unless otherwise directed by law, from any future sale of the public lands, and be appropriated to the sole purpose of supplying timber for the Navy of the United States; but nothing in this section contained shall be construed to prejudice the prior rights of any person claiming lands, which may be reserved in the manner herein provided.

Protection of live-oak and red-cedar timber. Feb. 23, 1822, v. 3, p. 651.

SEC. 2460. The President is authorized to employ so much of the land and naval forces of the United States as may be necessary effectually to prevent the felling, cutting down, or other destruction of the timber of the United States in Florida, and to prevent the transportation or carrying away any such timber as may be already felled or

*Note 3.*—An appropriation is made annually and expended under direction of the War Department, for care of the telegraph connecting the Capitol with the Departments and Government Printing Office. (See v. 22, chap. 143, p. 615, Mar. 3, 1883.)

cut down; and to take such other and further measures as may be deemed advisable for the preservation of the timber of the United States in Florida.

Mar. 3, 1878.

Examination of timber lands in Florida.

Mar. 3, 1879, ch. 189, v. 20, p. 470.

That the Secretary of the Navy be, and he is hereby, authorized to cause an examination to be made of the condition of all lands in the State of Florida which have been set apart or reserved for naval purposes, excepting the reservation upon which the navy-yard at Pensacola is located, and to ascertain whether or not such reserved lands are or will be of any value to the Government of the United States for naval purposes.

SEC. 2. That all of said lands which, in the judgment of the Secretary of the Navy, are no longer required for naval purposes shall, as soon as practicable, be certified by him to the Secretary of the Interior, and be subject to entry and sale in the same manner and under the same conditions as other public lands of the United States: *Provided*, That all persons who have in good faith made improvements on said reserved lands so certified at the time of the passage of this act, and who occupy the same, shall be entitled to purchase the part or parts so occupied and improved by them, not to exceed one hundred and sixty acres to any one person at one dollar and twenty-five cents per acre within such reasonable time as may be fixed by the Secretary of the Interior.

SEC. 3. That the sum of three thousand dollars, or as much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Navy to carry out the provisions of this act.

Cutting or destruction of live oak or red cedar, penalty.

Mar. 2, 1831, s. 1, v. 4, p. 472.

See sec. 4751, Pension fund.

SEC. 2461. If any person shall cut, or cause or procure to be cut, or aid, assist, or be employed in cutting, or shall wantonly destroy, or cause or procure to be wantonly destroyed, or aid, assist, or be employed in wantonly destroying any live-oak or red-cedar trees, or other timber standing, growing, or being on any lands of the United States, which, in pursuance of any law passed, or hereafter to be passed, have been reserved or purchased for the use of the United States, for supplying or furnishing therefrom timber for the Navy of the United States; or if any person shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing from any such lands which have been reserved or purchased, any live-oak or red-cedar trees, or other timber, unless duly authorized so to do, by order, in writing, of a competent officer, and for the use of the Navy of the United States; or if any person shall cut, or cause or procure to be cut, or aid, or assist, or be employed in cutting any live-oak or red-cedar trees, or other timber on, or shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing any live-oak or red-cedar trees or other timber, from any other lands of the United States, acquired, or hereafter to be acquired, with intent to export, dispose of, use, or employ the same in any manner whatsoever, other than for the use of the Navy of the United States; every such person shall pay a fine not less than

triple the value of the trees or timber so cut, destroyed, or removed, and shall be imprisoned not exceeding twelve months.

Vessels employed in carrying away live oak and red cedar, forfeiture of.
Idem, s. 2.
See sec. 4751, Pension fund, Navy.

SEC. 2462. If the master, owner, or consignee of any vessel shall knowingly take on board any timber cut on lands which have been reserved or purchased as in the preceding section prescribed, without proper authority, and for the use of the Navy of the United States; or shall take on board any live-oak or red-cedar timber cut on any other lands of the United States, with intent to transport the same to any port or place within the United States, or to export the same to any foreign country, the vessel on board of which the same shall be taken, transported, or seized, shall, with her tackle, apparel, and furniture, be wholly forfeited to the United States, and the captain or master of such vessel wherein the same was exported to any foreign country against the provisions of this section shall forfeit and pay to the United States a sum not exceeding one thousand dollars.

Aug. 4, 1892.
27 Stat. L., 348.
Timber and stone lands in all public-land States may be sold.
1878, June 3, ch. 151 (1 Supp. R. S., 167).
See notes 1 and 2.

SEC. 2. That an act entitled "An act for the sale of timber lands in the State of California, Oregon, Nevada, and Washington Territory," approved June third, eighteen hundred and seventy-eight, be, and the same is hereby, amended by striking out the words "States of California, Oregon, Nevada, and Washington Territory" where the same occur in the second and third lines of said act, and insert in lieu thereof the words "public-land States," the purpose of this act being to make said act of June third, eighteen hundred and seventy-eight, applicable to all the public-land States.

Forest reservations not affected.
1891, Mar. 3, ch. 561, s. 24 (1 Supp. R. S., 947).

SEC. 3. That nothing in this act shall be construed to repeal section twenty-four of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one.

Mar. 2, 1895.
28 Stat. L., 814.
Supp. R. S. 1892-95, p. 426.
Public lands.
Naval reserves Alabama and Mississippi restored to settlement.
R. S., secs. 2458-2462.

That the Secretary of the Navy be, and he is hereby, authorized to cause to be certified to the Secretary of the Interior, for restoration to the public domain, the whole or such portion or portions of the several tracts of land in the States of Alabama and Mississippi heretofore set apart and reserved for naval uses as are no longer required for the purposes for which they were reserved, or for any purposes connected with the naval service; and upon such certification the tracts of land described therein shall be duly restored to and become a part of the public lands of the United States

Homesteaders to have preference.
R. S., secs. 2289, 2290, as amended by Mar. 3, 1891, ch. 561., s. 5 (1 Supp. R S., 942).

and a preference right of entry for a period of six months from the date of this Act shall be given all bona fide settlers who are qualified to enter under the homestead law and have made improvements and are now residing upon any agricultural lands in said reservations, and for a period of

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Stone-land sales.

*Note 1.*—This act of 1878, June 3, ch. 151 (1 Supp. R. S., 167), while its title includes only timber lands, provides also (s. 1) that lands valuable chiefly for stone may be sold on the same terms as timber lands.

Forest reservations.

*Note 2.*—This section provides that the President may set apart public lands wholly or in part covered with timber or undergrowth, as public reservations.

six months from the date of settlement when that shall occur after the date of this Act:

See title "Homesteads," secs. 2289 and 2290.

*Provided*, That persons who enter under the homestead law shall pay for such lands not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry;

—to pay appraised value.

and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior:

—in installments.

*Provided*, That so much of the said lands as are situated on Back Bay, near the city of Biloxi, in the State of Mississippi, shall be disposed of under the town-site law and not as agricultural lands.

Lands near Biloxi to be entered as town sites. R. S., secs. 2380–2394.

SEC. 2463. It shall be the duty of all collectors of the customs within the States of Alabama, Mississippi, Louisiana, and Florida, before allowing a clearance to any vessel laden in whole or in part with live-oak timber, to ascertain satisfactorily that such timber was cut from private lands, or, if from public ones, by consent of the Navy Department. And it is also made the duty of all officers of the customs, and of the land officers within those States, to cause prosecutions to be seasonably instituted against all persons known to be guilty of depredations on, or injuries to, the live-oak growing on the public lands.

Clearance of vessels laden with live oak; prosecution of depredators. Mar. 2, 1833, s. 3, v. 4, p. 647. See sec. 4751, Pension fund, Navy.

SEC. 4205. Collectors of the collection-districts within the States of Florida, Alabama, Mississippi, and Louisiana, before allowing a clearance to any vessel laden in whole or in part with live-oak timber, shall ascertain satisfactorily that such timber was cut from private lands, or, if from public lands, by consent of the Department of the Navy.

Title 48, chap. 2.

Clearance of vessel laden with live oak. Mar. 3, 1833, s. 3, v. 4, p. 647.

SEC. 5388. Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys, or procures to be wantonly destroyed, any timber standing upon lands of the United States, which, in pursuance of law, may be reserved or purchased for military or other purposes, shall pay a fine of not more than five hundred dollars, and be imprisoned not more than twelve months.

Title 70, chap. 3.

Depredations on timber lands. Mar. 3, 1859, v. 11, p. 408.

SEC. 1. That if any person or persons shall knowingly and unlawfully cut, or shall knowingly aid, assist, or be employed in unlawfully cutting, or shall wantonly destroy or injure, or procure to be wantonly destroyed or injured, any timber-tree or any shade or ornamental tree, or any other kind of tree, standing, growing, or being upon any lands of the United States, which, in pursuance of law, have been reserved, or which have been purchased by the United States for any public use, every such person or persons so offending, on conviction thereof before any circuit or district court of the United States, shall, for every such offense, pay a fine not exceeding five hundred dollars, or shall be imprisoned not exceeding twelve months.

Mar. 3, 1875.

Cutting or injuring trees on lands of U. S. reserved or purchased for public use.

Punishment.

SEC. 2. That if any person or persons shall knowingly and unlawfully break or destroy any fence, wall, hedge, or gate inclosing any lands of the United States, which have, in pursuance of any law, been reserved or purchased by the United States for any public use, every such person so

Breaking fences etc., inclosing lands of U. S. reserved or purchased for public use.

Punishment.

offending, on conviction, shall, for every such offense, pay a fine not exceeding two hundred dollars, or be imprisoned not exceeding six months.

Breaking fences etc., and driving cattle, etc., on to lands of U. S. reserved for public use.

SEC. 3. That if any person or persons shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States, reserved or purchased as aforesaid, and shall drive any cattle, horses, or hogs upon the lands aforesaid for the purpose of destroying the grass or trees on the said grounds, or where they may destroy the said grass or trees, or if any such person or persons shall knowingly permit his or their cattle, horses, or hogs to enter through any of said inclosures upon the lands of the United States aforesaid, where the said cattle, horses, or hogs may or can destroy the grass or trees or other property of the United States on the said land, every such person or persons so offending, on conviction, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding twelve months: *Provided*, That nothing in this act shall be construed to apply to unsurveyed public lands and to public lands subject to pre-emption and homestead laws, or to public lands subject to an act to promote the development of the mining resources of the United States, approved May tenth, eighteen hundred and seventy-two.

Permitting cattle, etc., to enter through inclosures of such lands.

Punishment.

*Proviso.*

Mar. 3, 1875, v. 18, p. 481.

Apr. 30, 1878.

All moneys heretofore, and that shall hereafter be, collected for depredation upon the public lands shall be covered into the Treasury of the United States, as other moneys received from the sale of public lands. * * *

Deposit of collections for depredations.

Seizure of timber exported.

If any timber cut on the public lands shall be exported from the Territories of the United States, it shall be liable to seizure by United States authority wherever found. * * *

Apr. 30, 1878, ch. 76, s. 2, v. 20, p. 46.

See note 3.

## REVENUE-CUTTER SERVICE.


Sec.
1492. Rank with the Navy.
2749. Number of officers and men.
Act July 31, 1894. Revenue-cutter service; chief of division.
2750. Grades of engineers.
2751. Appointment of commissioned officers.
2752. Qualifications of captains and lieutenants.
2753. Compensation of officer of revenue-cutter service.
2754. Wages of petty officers and crews.
2755. Officers on duty entitled to one Navy ration per pay.
2756. Contracts for rations authorized.
2757. Revenue officers should co-operate with the Navy.
Act Apr. 6, 1894. Arbitration in regard to fur seals.
2760. Powers and duties of officers of revenue-cutters.
Act July 31, 1876. Appointment of cadets. Detail for life-saving service.
Act Mar. 2, 1895. Board on retirement of officers.


Title 15, chap. 4.

Revenue-cutter officers serving as part of the Navy.

SEC. 1492. The officers of the revenue-cutter service when serving, in accordance with law, as a part of the Navy, shall be entitled to relative rank, as follows: Captains, with and next after lieutenants commanding in the Navy;

*Note 3.*—Under section 4751, the Secretary of the Navy has power to mitigate any fine, penalty, or forfeiture incurred under the provisions of the sections designated therein; and this power may be exercised by him as well where the proceedings, civil or criminal, have not been instituted with his knowledge and by his direction as where they have been thus instituted. (Op., XV, 436, Devens, Jan. 23, 1878.)

Live-oak timber cut, in violation of law, for the purposes of transportation, is not subject to forfeiture, so as to give informers a right to a distributive portion of it, such timber being all the while, in law, the property of the United States. The act of March 2, 1831, makes no provision for the forfeiture of timber. (Op., IV, 247, Nelson, Sept. 2, 1843.)

The moneys referred to in the act of April 30, 1878, chap. 76, are that part of the penalty which is payable to the Secretary of the Navy, under sec. 4751, Pension Funds. (Op., July 19, 1883. Phillips.)

first lieutenants, with and next after lieutenants in the Navy; second lieutenants, with and next after masters in line in the Navy; third lieutenants, with and next after ensigns in the Navy.

July 4, 1863, s. 4, v. 12, p. 640; Mar. 2, 1799, s. 98, v. 1, p. 699; July 16, 1862, ss. 1, 11, v. 12, pp. 583, 585.
See title "Rank and precedence," sec. 1492.

Title 34, chap. 3.

SEC. 2749. The officers for each revenue-vessel shall be one captain, and one first, one second, and one third lieutenant, and for each steam-vessel, in addition, one engineer and one assistant engineer; but the Secretary of the Treasury may assign to any vessel a greater number of officers whenever in his opinion the nature of the service which she is directed to perform requires it. And vessels of both descriptions shall have such number of petty officers and men as in the opinion of the Secretary are required to make them efficient for their service.

Number of officers and men.
July 25, 1861, s. 2, v. 12, p. 275; July 31, 1876, v. 19, p. 107.

July 31, 1894.

[*Par. 3.*] Division of revenue-cutter service: * * That the Secretary of the Treasury shall detail a captain of the Revenue-Cutter Service who shall be chief of the division of Revenue-Cutter Service, and a chief engineer, who shall be engineer in chief of said Service, but no additional pay or emoluments shall be allowed on account of such detail. * *

28 Stat. L., 162.
Revenue-Cutter Service; chief of division.
—chief engineer.
No additional pay. R. S., sec. 2750.

SEC. 2750. The grades of engineers shall be chief engineer, and first and second assistant engineer, with the pay and relative rank of first, second, and third lieutenant, respectively.

Grades of engineers.
Feb. 4, 1863, s. 2, v. 12, p. 639.
Title of first and second assistant engineers changed respectively to passed assistant engineers. Act of Feb. 24, 1874.

SEC. 2751. The commissioned officers of the revenue-cutter service shall be appointed by the President, by and with the advice and consent of the Senate.

Appointment of commissioned officers.
Idem, s. 1.

SEC. 2752. No person shall be appointed to the office of captain, first, second, or third lieutenant, of any revenue-cutter, who does not adduce competent proof of proficiency and skill in navigation and seamanship.

Qualifications of captains and lieutenants.
Mar. 2, 1855, s. 2, v. 10, p. 630.

SEC. 2753. The compensation of the officers of the revenue-cutter service shall be at the following rates while on duty:

Compensation of officers of Revenue-Cutter Service.
Feb. 28, 1867, s. 1, v. 14, p. 416.

Captains, twenty-five hundred dollars a year each.

First lieutenants and chief engineers, eighteen hundred dollars a year each.

Second lieutenants and first assistant engineers, fifteen hundred dollars a year each.

First assistant engineers changed as above.

Third lieutenants and second assistant engineers, twelve hundred dollars a year each.

And at the following rates while on leave of absence or while waiting orders:

Captains, eighteen hundred dollars a year each.

First lieutenants and chief engineers, fifteen hundred dollars a year each.

Second lieutenants and first assistant engineers twelve hundred dollars a year each.

First assistant engineers changed as above.

Second assistant engineers changed as above.

Third lieutenants and second assistant engineers, nine hundred dollars a year each.

Wages of petty officers and crews.
Feb. 4, 1863, s. 3, v. 12, p. 640.

SEC. 2754. The wages of petty officers and seamen of the revenue-cutter service shall not exceed the average wages paid for like services on the Atlantic or Pacific coast, respectively, in the merchant service.

Rations.
Feb. 28, 1867, s. 2, v. 14, p. 416.

SEC. 2755. Each officer of the revenue-cutter service, while on duty, shall be entitled to one Navy ration per day.

Contracts for rations.
Mar. 2, 1799, s. 98, v. 1, p. 629.
See note 1.

SEC. 2756. The Secretary of the Treasury may cause contracts to be made for the supply of rations for the officers and men of the revenue-cutters.

Revenue officers to co-operate with the Navy.
Idem.
See secs. 5557, 5558, Slave trade.

SEC. 2757. The revenue-cutters shall, whenever the President so directs, co-operate with the Navy, during which time they shall be under the direction of the Secretary of the Navy, and the expenses thereof shall be defrayed by the Navy Department.

Apr. 6, 1894.

Preservation of fur seals.
28 Stat. L., 52.
Vol. 2, Supp. R. S., 1892-95, ch. 57, p. 178.
An act to give effect to the award rendered by the Tribunal of Arbitration, at Paris, under the treaty between the United States and Great Britain.

President to use naval force.

SEC. 11. That it shall be the duty of the President to cause a sufficient naval force to cruise in the waters to which this Act is applicable to enforce its provisions,

Naval officers to seize unlawful vessels.

and it shall be the duty of the commanding officer of any vessel belonging to the naval or revenue service of the United States, when so instructed by the President, to seize and arrest all vessels of the United States found by him to be engaged, used, or employed in the waters last aforesaid in violation of any of the prohibitions of this Act, or of any regulations made thereunder, and to take the same, with all persons on board thereof, to the most convenient port in any district of the United States mentioned in this Act, there to be dealt with according to law.

—to take them to port.
See secs. 4296, 4297, "Piracy and robbery."

Powers and duties of officers of revenue-cutters.
Idem, s. 99, p. 700.

SEC. 2760. The officers of the revenue-cutters shall respectively be deemed officers of the customs, and shall be subject to the direction of such collectors of the revenue, or other officers thereof, as from time to time shall be designated for that purpose. They shall go on board all vessels which arrive within the United States or within four leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communi-

*Note 1.*—Officers of the revenue-cutter service belong to the civil service, as contradistinguished from the naval and military—are subject to removal by the President, with the concurrence of the Senate in confirming the nomination of a successor. (Op., XV, p. 396, Nov. 13, 1877, Devens.)

cations with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination.

July 31, 1876.

Appointment of cadets. 19 Stat. L., v. 19, p. 102.

Hereafter upon the occurring of a vacancy in the grade of third lieutenant in the Revenue Marine Service, the Secretary of the Treasury may appoint a cadet, not less than eighteen nor more than twenty-five years of age, with rank next below that of third lieutenant, whose pay shall be three-fourths that of a third lieutenant, and who shall not be appointed to a higher grade until he shall have served a satisfactory probationary term of two years, and passed the examination required by the regulations of said service; and upon the promotion of such cadet another may be appointed in his stead; but the whole number of third lieutenants and cadets shall at no time exceed the number of third lieutenants now authorized by law.

Aug. 18, 1894.

28 Stat. L., 372. Revenue-Cutter Service. Cadets' pay. 1876, July 31, ch. 246, par. 3 (1 Supp. R. S., 114). See note 2.

That on and after the passage of this Act the pay of cadets in the Revenue-Cutter Service shall be five hundred dollars per annum and one ration per day, in lieu of the rates at present authorized by law, chapter two hundred and forty-six, paragraph four, Act July thirty-first, eighteen hundred and seventy-six; * * *

Mar. 21, 1895.

28 Stat. L., 910. Revenue-Cutter Service. See note 3. Board on retirement of officers.

[*Par. 4.*] That the President of the United States is hereby authorized to convene a board, to be composed of three surgeons of the Marine-Hospital Service, to examine and report upon all officers now in the Revenue-Cutter Service who, through no vicious habits of their own, are now incapacitated by reason of the infirmities of age or physical or mental disability to efficiently perform the duties of their respective offices.

Pay of retired officers.

And such officers as, under the terms of this Act, may be reported by said board to be so permanently incapacitated shall be placed on waiting orders out of the line of promotion, with one-half active duty pay, and the vacancies thereby created in the active list of the officers shall be filled by promotion in the order of seniority, as now provided by law:

Examination for promotion.

*Provided, however*, That no such promotion shall be made until the professional qualifications of the candidate shall have been determined by written examination before a board of officers of the Revenue-Cutter Service convened by the Secretary of the Treasury for that purpose:

Number of officers not increased.

*Provided further*, That the number of officers upon the active list now authorized by law shall not be increased by this Act. * * *

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*Note 2.*—The laws relating to the Revenue Cutter or Revenue Marine Service are reviewed in note to 1888, Oct. 2, ch. 1069, par. 1 (1 Supp. R. S., 626). The administration of certain oaths in the service is provided for by 1893, March 3, ch. 208, par. 2, p. 120; by 1894, July 31, ch. 174, par. 3, p. 210, the name is fixed as the Revenue-Cutter Service, and by sec. 7, par. 1, of the same act, p. 213, the accounts are to be settled by the Auditor for the Treasury Department.

*Note 3.*—See notes to 1888, Oct. 2, ch. 1069, par. 1 (1 Supp. R. S., 626), and 1894, Aug. 18, ch. 301, par. 2, p. 252, for review of legislation relative to the Revenue-Cutter (formerly called Revenue-Marine) Service.

## SLAVE TRADE, KIDNAPPING, COOLY TRADE.

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5569. Instructions to commanders of armed vessels.
Act Feb. 26, 1895. Contract labor.

Title 29.

Cooly trade prohibited.
Feb. 19, 1862, s. 1, v. 12, p. 340; Feb. 9, 1869, v. 15, p. 269.
See citizenship, title "Naturalization."

SEC. 2158. No citizen of the United States, or foreigner coming into or residing within the same, shall, for himself or for any other person, either as master, factor, owner, or otherwise, build, equip, load, or otherwise prepare, any vessel, registered, enrolled, or licensed, in the United States, for the purpose of procuring from any port or place the subjects of China, Japan, or of any other oriental country, known as "coolies," to be transported to any foreign port, or place, to be disposed of, or sold, or transferred, for any time, as servants or apprentices, or to be held to service or labor.

Vessels employed in cooly trade shall be forfeited.
Ibid.

SEC. 2159. If any vessel, belonging in whole or in part to a citizen of the United States, and registered, enrolled, or otherwise licensed therein, be employed in the "cooly-trade," so called, contrary to the provisions of the preceding section, such vessel, her tackle, apparel, furniture, and other appurtenances, shall be forfeited to the United States, and shall be liable to be seized, prosecuted, and condemned in any of the circuit courts or district courts of the United States for the district where the vessel may be found, seized, or carried.

Building vessels to engage in cooly trade, how punished.
Feb. 19, 1862, s. 2, v. 12, p. 340.

SEC. 2160. Every person who so builds, fits out, equips, loads, or otherwise prepares, or who sends to sea, or navigates, as owner, master, factor, agent, or otherwise, any vessel, belonging in whole or in part to a citizen of the United States, or registered, enrolled, or licensed within the same, knowing or intending that such vessel is to be or may be employed in that trade, contrary to the provisions of section twenty-one hundred and fifty-eight, shall be liable to a fine not exceeding two thousand dollars, and be imprisoned not exceeding one year.

Punishment for violation of section 2158.
Ibid., s. 3.

SEC. 2161. Every citizen of the United States who, contrary to the provisions of section twenty-one hundred and fifty-eight, takes on board of any vessel, or receives or transports any such subjects as are described in that section, for

the purpose of disposing of them in any way as therein prohibited, shall be liable to a fine not exceeding two thousand dollars and be imprisoned not exceeding one year.

SEC. 2162. Nothing herein contained shall be deemed to apply to any voluntary emigration of the subjects specified in section twenty-one hundred and fifty-eight, or to any vessel carrying such person as passenger on board the same, but a certificate shall be prepared and signed by the consul or consular agent of the United States residing at the port from which such vessel may take her departure, containing the name of such person, and setting forth the fact of his voluntary emigration from such port, which certificate shall be given to the master of such vessel; and the same shall not be given until such consul or consular agent is first personally satisfied by evidence of the truth of the facts therein contained.

This title not to interfere with voluntary emigration.
Ibid., s. 4.
See Mar. 3, 1875.

SEC. 2163. The President is empowered, in such way and at such time as he may judge proper, to direct the vessels of the United States, and the masters and commanders thereof, to examine all vessels navigated or owned in whole or in part by citizens of the United States, and registered, enrolled, or licensed under the laws thereof, whenever, in the judgment of such master or commanding officer, reasonable cause exists to believe that such vessel has on board any subjects of China, Japan, or other Oriental country, known as "coolies"; and, upon sufficient proof that such vessel is employed in violation of the preceding provisions, to cause her to be carried, with her officers and crew, into any port or district within the United States, and delivered to the marshal of such district, to be held and disposed of according to law.

Examination of vessel.
No charge upon particular persons immigrating, etc.
Ibid., s. 6, p. 341.

That if any citizen of the United States, or other person amenable to the laws of the United States, shall take, or cause to be taken or transported, to or from the United States any subject of China, Japan, or any Oriental country, without their free and voluntary consent, for the purpose of holding them to a term of service, such citizen or other person shall be liable to be indicted therefor, and, on conviction of such offense, shall be punished by a fine not exceeding two thousand dollars and be imprisoned not exceeding one year; and all contracts and agreements for a term of service of such persons in the United States, whether made in advance or in pursuance of such illegal importation, and whether such importation shall have been in American or other vessels, are hereby declared void.

Mar. 3, 1875.

Citizen United States transporting subject of China or Japan without free consent.
Penalty.
Contract for service void.
Mar. 3, 1875, s. 2, v. 18, p. 477.

SEC. 5378. Every person who builds, fits out, equips, loads, or otherwise prepares, or sends away, either as master, factor, or owner, any vessel, in any port or place within the jurisdiction of the United States, or causes such vessel to sail from any port or place whatsoever, within such jurisdiction, for the purpose of procuring any negro, mulatto, or person of color from any foreign kingdom or country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be punished by a fine of not less than one

Title 70, chap. 3.

Kidnaping and slave trade.
Equipping vessels for slave trade.
Apr. 20, 1818, s. 3, v. 3, p. 451.
See sec. 5551.

thousand dollars, nor more than five thousand dollars, one-half to the use of the United States and the other half to the use of the person prosecuting the indictment to effect, and shall, moreover, be imprisoned at hard labor for a term not more than seven years, nor less than three years.

Transporting persons to be held as slaves. Ibid., s. 4.

SEC. 5379. Every citizen or other person resident within the jurisdiction of the United States, who takes on board, receives, or transports from any foreign kingdom or country, or from sea, any negro, mulatto, or person of color, in any vessel, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or to be held to service or labor, shall be punished as prescribed in the preceding section.

Serving in American vessels transporting slaves. May 10, 1800, s. 2, v. 2, p. 70.

SEC. 5381. Every citizen of the United States, or other person residing therein, who voluntarily serves on board of any American vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be punished by a fine of not more than two thousand dollars, and by imprisonment not more than two years.

Serving in foreign vessels employed in the slave trade. Ibid., s. 3, p. 71.

SEC. 5382. Every citizen of the United States who voluntarily serves on board of any foreign vessel employed in the slave-trade, shall be punished as prescribed in the preceding section.

Title 70, chap. 7.

Receiving on board a vessel, or carrying away any person to be sold or held as a slave. May 21, 1866, s. 2, v. 14, p. 50. See sec. 5379.

SEC. 5524. Every master or owner or person having charge of any vessel who receives on board any other person, with the knowledge or intent that such person is to be carried from any State, Territory, or district of the United States to a foreign country, state, or place, to be held or sold as a slave, or carries away from any State, Territory, or district of the United States any such person, with the intent that he may be so held or sold as a slave, shall be punished by a fine of not more than five thousand nor less than five hundred dollars, or by imprisonment not more than five years, or by both.

Kidnapping. Ibid., s. 1. See sec. 5375, Piracy.

SEC. 5525. Every person who kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment not more than five years or by both.

June 23, 1874.

Bringing into the United States kidnaped persons. 17 Blatch., 423; 1 Fed. Rep., 676.

That whoever shall knowingly and wilfully bring into the United States, or the Territories thereof, any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary service, and whoever shall knowingly and wilfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever, and every person who shall know-

ingly and wilfully hold to involuntary service any person so sold and bought, shall be deemed guilty of a felony, and, on conviction thereof, be imprisoned for a term not exceeding five years, and pay a fine not exceeding five thousand dollars.

Penalty. June 23, 1874, ch.464, v.18, p.251.

SEC. 2. That every person who shall be accessory to any of the felonies herein declared, either before or after the fact, shall be deemed guilty of a felony, and, on conviction thereof be imprisoned for a term not exceeding five years and pay a fine not exceeding one thousand dollars.

Title 71.

Equipping, etc., vessel for slave trade; forfeiture of vessel. Apr. 20, 1818, s. 2, v. 3, p. 451; Mar. 22, 1794, s. 1, v. 1, p. 347. See sec. 5375, Piracy.

SEC. 5551. No person shall, for himself, or for another, as master, factor, or owner, build, fit, equip, load, or otherwise prepare any vessel, in any port or place within the jurisdiction of the United States, or cause any vessel to sail from any port or place within the jurisdiction of the same, for the purpose of procuring any negro, mulatto, or person of color, from any foreign kingdom, place, or country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of, as a slave, or to be held to service or labor; and every vessel so built, fitted out, equipped, laden, or otherwise prepared, with her tackle, apparel, furniture, and lading, shall be forfeited, one moiety to the use of the United States, and the other to the use of the person who sues for the forfeiture, and prosecutes the same to effect.

Penalty on persons building, equipping, etc. Mar. 22, 1794, s. 2, v. 1, p. 349. See sec. 5378.

SEC. 5552. Every person so building, fitting out, equipping, loading, or otherwise preparing or sending away any vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the provisions of the preceding section, or any ways aiding or abetting therein, shall, besides the forfeiture of the vessel, pay the sum of two thousand dollars; one moiety thereof to the use of the United States, and the other moiety thereof to the use of the person who sues for and prosecutes the same to effect.

Forfeiture of vessel transporting slaves. Apr. 20, 1818, s. 4, v. 3, p. 451; May 10, 1800, s. 4, v. 2, p. 71. See secs. 5378, 5379.

SEC. 5553. Every vessel employed in carrying on the slave-trade, or on which is received or transported any negro, mulatto, or person of color, from any foreign kingdom or country, or from sea, for the purpose of holding, selling, or otherwise disposing of such person as a slave, or of holding such person to service or labor, shall, together with her tackle, apparel, furniture, and the goods and effects which may be found on board, or which may have been imported thereon in the same voyage, be forfeited; one moiety to the United States, and the other to the use of the person who sues for and prosecutes the forfeiture to effect.

Penalty for receiving persons on board to be sold as slaves. Mar. 22, 1794, s. 4, v. 1, p. 349.

SEC. 5554. If any citizen of the United States takes on board, receives, or transports any negro, mulatto, or person of color, for the purpose of selling such person as a slave, he shall, in addition to the forfeiture of the vessel, pay for each person, so received on board or transported, the sum of two hundred dollars, to be recovered in any court of the United States; the one moiety thereof to the use of the United

States, and the other moiety to the use of the person who sues for and prosecutes the same to effect.

Use of armed vessels.

SEC. 5557. The President is authorized, when he deems it expedient, to man and employ any of the armed vessels of the United States to cruise wherever he may judge attempts are making to carry on the slave-trade, by citizens or residents of the United States, in contravention of laws prohibitory of the same; and, in such case, he shall instruct the commanders of such armed vessels to seize, take, and bring into any port of the United States, to be proceeded against according to law, all American vessels, wheresoever found, which may have on board or which may be intended for the purpose of taking on board, or of transporting, or may have transported any negro, mulatto, or person of color, in violation of the provisions of any act of Congress prohibiting the traffic in slaves.

Seizure of vessels engaged in the slave trade.
May 10, 1800, s. 4, v. 2, p. 71; Mar. 2, 1807, s. 7, v. 2, p. 428; Mar. 3, 1819, s. 1, v. 3, p. 532.

Proceeds of condemned vessels, how distributed.
Ibid.

SEC. 5558. The proceeds of all vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which are so seized, prosecuted, and condemned, shall be divided equally between the United States and the officers and men who seize, take, or bring the same into port for condemnation, whether such seizure be made by an armed vessel of the United States or revenue cutter thereof; and the same shall be distributed as is provided by law for the distribution of prizes taken from an enemy.

Disposal of persons found on board seized vessels.
Mar. 3, 1819, s. 1, v. 3, p. 532.

SEC. 5559. The officers and men, to be entitled to one-half of the proceeds mentioned in the last section, shall safely keep every negro, mulatto, or person of color, found on board of any vessel so seized, taken, or brought into port, for condemnation, and shall deliver every such negro, mulatto, or person of color, to the marshal of the district into which he may be brought, if into a port of the United States, or if elsewhere, to such person as may be lawfully appointed by the President, in the manner directed by law; transmitting to the President, as soon as may be after such delivery, a descriptive list of such negroes, mulattoes, or persons of color, in order that he may give directions for the disposal of them.

Apprehension of officers and crew.
Ibid., and May 10, 1800, s. 4, v. 2, p. 71.

SEC. 5560. The commanders of such commissioned vessels shall cause to be apprehended, and taken into custody, every person found on board of such offending vessel, so seized and taken, being of the officers or crew thereof, and him convey, as soon as conveniently may be, to the civil authority of the United States, to be proceeded against in due course of law.

Removal of persons delivered from seized vessels.
Mar. 3, 1819, s. 2, v. 3, p. 533.

SEC. 5561. The President is authorized to make such regulations and arrangements as he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States, of all such negroes mulattoes, or persons of color, as may be delivered and brought within their jurisdiction; and to appoint a proper person residing upon the coast of Africa as agent, for receiving the negroes, mulattoes, or persons of color delivered from on board vessels seized in the prosecution of the slave-trade, by commanders of United States armed vessels.

SEC. 5562. A bounty of twenty-five dollars shall be paid to the officers and crews of the commissioned vessels of the United States, or revenue-cutters, for each negro, mulatto, or person of color, who may be, as hereinbefore provided, delivered to the marshal or agent duly appointed to receive such person; and the Secretary of the Treasury is required to pay, or cause to be paid, to such officers and crews, or their agent, such bounty for each person so delivered.

Bounty. Ibid., s. 3.

SEC. 5563. It shall be the duty of the commander of any armed vessel of the United States, whenever he makes any capture under the preceding provisions, to bring the vessel and her cargo, for adjudication, into some of the ports of the State or Territory to which such vessel so captured may belong, if he can ascertain the same; if not, then to be sent into any convenient port of the United States.

To what port captured vessels sent. Ibid., s. 5.

SEC. 5564. Every owner, master, or factor of any foreign vessel, clearing out for any of the coasts or kingdoms of Africa, or suspected to be intended for the slave-trade, and the suspicion being declared to the officer of the customs by any citizen, on oath, and such information being to the satisfaction of the officer, shall first give bond, with sufficient sureties, to the Treasurer of the United States, that none of the natives of Africa, or any other foreign country or place, shall be taken on board such vessel, to be transported or sold as slaves, in any other foreign port or place whatever, within nine months thereafter.

When owners of foreign vessels shall give bond. Mar. 22, 1794, s. 3, v. 1, p. 349.

SEC. 5565. The forfeitures which may hereafter be incurred under any of the preceding provisions, and which are not otherwise expressly disposed of, shall accrue and be one moiety thereof to the use of the informer, and the other moiety to the use of the United States, except where the prosecution is first instituted on behalf of the United States, in which case the whole shall be to their use.

Distribution of penalties. May 10, 1800, s. 7, v. 2, p. 71.

SEC. 5566. It may be lawful for the President to enter into contract with any person, society, or body-corporate, for a term not exceeding five years, to receive from the United States, through their duly constituted agent upon the coast of Africa, all negroes, mulattoes, or persons of color, delivered from on board vessels seized in the prosecution of the slave-trade, by commanders of the United States armed vessels, and to provide such negroes, mulattoes, and persons of color with comfortable clothing, shelter, and provisions, for a period not exceeding one year from the date of their being landed on the coast of Africa, at a price in no case to exceed one hundred dollars for each person so clothed, sheltered, and provided with food; and any contract so made may be renewed by the President from time to time as found necessary, for periods not to exceed five years on each renewal.

Contracts for reception in Africa of persons delivered from seized vessels. June 16, 1860, s. 1, v. 12, p. 40.

SEC. 5567. The President is authorized to issue instructions to the commanders of the armed vessels of the United States, directing them, whenever it is practicable, and under such rules and regulations as he may prescribe, to proceed directly to the coast of Africa, and there hand over to the agent of the United States all negroes, mulattoes,

Instructions to commanders of armed vessels. Ibid., s. 2, p. 41.

and persons of color delivered from on board vessels seized in the prosecution of the slave-trade; and they shall afterward bring the captured vessels and persons engaged in prosecuting such trade to the United States for trial and adjudication.

Contracts for reception, etc., in West Indies, of persons delivered from seized vessels.
July 17, 1862, s. 1, v. 12, p. 592.

SEC. 5568. It may be lawful for the President to enter into arrangement, by contract or otherwise, with one or more foreign governments having possessions in the West Indies or other tropical regions, or with their duly constituted agent, to receive from the United States, for a term not exceeding five years, at such place as may be agreed upon, all negroes, mulattoes, or persons of color, delivered from on board vessels seized in the prosecution of the slave-trade, by commanders of United States armed vessels, and to provide them with suitable instruction, and with comfortable clothing and shelter, and to employ them, at wages, under such regulations as may be agreed upon, for a period not exceeding five years from the date of their being landed at the place agreed upon. But the United States shall incur no expenses on account of such negroes, mulattoes, or persons of color, after having landed them at the place agreed upon. And any arrangement so made may be renewed by the President from time to time, as may be found necessary, for periods not exceeding five years on each renewal.

Instructions to commanders of armed vessels.
Ibid., s. 2.
See sec. 2158.

SEC. 5569. The President is authorized to issue instructions to the commanders of the armed vessels of the United States, directing them, whenever it is practicable, and under such regulations as he may prescribe, to proceed directly to such place as shall have been agreed upon with any foreign government, or its duly constituted agent, under the provisions of the preceding section, and there deliver to the duly constituted authorities or agents of such foreign government all negroes, mulattoes, or persons of color, taken from on board vessels seized in the prosecution of the slave trade; and they shall afterward bring the vessel and persons engaged in prosecuting such trade to the United States for trial and adjudication.

Feb. 26, 1885.

23 Stat. L., 332.
Assisting, etc., foreign emigrants under contract for labor unlawful.
R. S., secs. 2158-2164.
1875, Mar. 3, ch. 141, p. 86; 1882, Aug. 3, ch. 376, p. 370; 1887, Feb. 23, ch. 220; 1891, Mar. 3, ch. 551, pp. 541, 934.

That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

Such contracts hereafter void.
See note 1.

SEC. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership, or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service or having reference to the perform-

*Note 1.*—See sections 6-10 added to this act by 1887, Feb. 23, ch. 220, p. 541.

ance of labor or service by any person in the United States, its Territories, or the District of Columbia previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

Penalty for violation of act. 1888, Oct. 19, ch. 1210, par. 1, p. 633. 28 Fed. Rep., 796; 36 Fed. Rep., 303; 40 Fed. Rep., 709; 41 Fed. Rep., 751; 43 Fed. Rep., 115; 45 Fed. Rep., 44; 19 Opins., 344.

SEC. 3. That for every violation of any of the provisions of section one of this act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories, or the District of Columbia, to perform labor or service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offence the sum of one thousand dollars, which may be sued for and recovered by the United States or by any person who shall first bring his action therefor including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the circuit courts of the United States; the proceeds to be paid into the Treasury of the United States; and separate suits may be brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

Master of vessel, knowingly bringing such emigrant laborer, how punished. 1891, Mar. 3, ch. 551, s. 8, p. 935.

SEC. 4. That the master of any vessel who shall knowingly bring within the United States on any such vessel, and land, or permit to be landed, from any foreign port or place, any alien laborer, mechanic, or artisan who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such alien laborer, mechanic or artisan so brought as aforesaid, and may also be imprisoned for a term not exceeding six months.

Foreigners temporarily in United States may engage foreigners as private secretaries, servants, etc.

SEC. 5. That nothing in this act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants, or domestics for such foreigner temporarily residing in the United States as aforesaid;

Skilled workmen on new industries, when excepted.

Nor shall this act be so construed as to prevent any person, or persons, partnership, or corporation from engaging, under contract or agreement, skilled workman in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States:

—also artists, etc., and servants. 1891, Mar. 3, ch. 551, s. 5, p. 935.

*Provided*, That skilled labor for that purpose can not be otherwise obtained; nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers,

—and relatives.

nor to persons employed strictly as personal or domestic servants:

*Provided*, That nothing in this act shall be construed as prohibiting any individual from assisting any member of his family or any relative or personal friend, to migrate from any foreign country to the United States, for the purpose of settlement here.

Repeal.

SEC. 6. That all laws or parts of laws conflicting herewith be, and the same are hereby, repealed.

## TREASON, REBELLION, CONSPIRACY, AND INSURRECTION.


Sec.
1642. Militia to be called out.
1643. Apportioned among States.
1644. Subject to rules of war.
—— Arms to be furnished.
1033. Copy of indictment, etc., to be furnished.
1034. Entitled to counsel.
2111. Sending seditious messages; penalty.
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5299. Power to suppress insurrection in violation of civil rights.
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5335. Criminal correspondence with foreign governments.
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5406. Conspiring to intimidate witnesses, etc.
5407. Conspiracy to defeat the enforcement of the laws.
5440. All parties to a conspiracy equally guilty.
5518. Conspiracy to prevent holding office.
5519. Conspiracy to deprive any person of equal protection of the laws.


Title 16.

Orders of President in case of invasion.
Feb. 28, 1795, s. 1, v. 1, p. 424.

SEC. 1642. Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States, most convenient to the place of danger, or scene of action, as he may deem necessary to repel such invasion, or to suppress such rebellion, and to issue his orders for that purpose to such officers of the militia as he may think proper.

Militia, how apportioned.
July 17, 1862, s. 1, v. 12, p. 597.

SEC. 1643. When the militia of more than one State is called into the actual service of the United States by the President, he shall apportion them among such States according to representative population.

Subject to rules of war.
Feb. 28, 1795, s. 4, v. 1, p. 424; July 29, 1861, s. 3, v. 12, p. 282.

SEC. 1644. The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

Mar. 3, 1879.

Arms to be furnished for protection of public property.
Mar. 3, 1879, ch. 183, v. 20, p. 410.

That upon the request of the head of any Department, the Secretary of War be, and he hereby is, authorized and directed to issue arms and ammunition whenever they may be required for the protection of the public money and property, and they may be delivered to any officer of the Department designated by the head of such Department,

to be accounted for to the Secretary of War, and to be returned when the necessity for their use has expired. See note 1.

Title 18, chap. 18.

Copy of indictment and list of jurors and witnesses. Apr. 30, 1790, s. 29, v. 1, p. 118.

SEC. 1033. When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

Persons indicted for capital crimes entitled to counsel and to compel witnesses. Idem.

SEC. 1034. Every person who is indicted of treason, or other capital crime, shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, and they shall have free access to him at all seasonable hours. He shall be allowed, in his defense, to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosection.

Title 28, chap. 3.

Sending seditious messages; penalty. June 30, 1834, s. 13, v. 4, p. 731.

SEC. 2111. Every person who sends any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace and tranquility of the United States, is liable to a penalty of two thousand dollars.

Carrying seditious messages; penalty. Idem, s. 14.

SEC. 2112. Every person who carries or delivers any talk, message, speech, or letter, intended to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace or tranquility of the United States, knowing the contents thereof, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, is liable to a penalty of one thousand dollars.

Correspondence with foreign nations, to excite Indians to war; penalty. Idem, s. 15. See sec. 5335.

SEC. 2113. Every person who carries on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual, to war against the United States, or to the violation of any existing treaty; or who alienates, or attempts to alienate, the confidence of any Indian or Indians from the Government of the United States, is liable to a penalty of one thousand dollars.

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*Note 1.*—The President's proclamation, Aug. 20, 1866, 14 Stat., 817, was an authoritative declaration that the rebellion was suppressed, and it is to be so regarded on and after that date. The recognition and adoption of the time so designated in the act or March 2, 1867, 14 Stat., 428, gives to it the force and sanction of positive law, and makes it binding and conclusive on the courts. (C. C., IV, p. 1. See Wallace, 12, p. 700.)

Title 69.

Insurrection against a State government.
Feb. 28, 1795, s. 1, v. 1, p. 421; Mar. 3, 1807, v. 2, p. 443.

SEC. 5297. In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive, when the legislature cannot be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ, for the same purposes, such part of the land or naval forces of the United States as he deems necessary.

Insurrection against the Government of the United States.
July 29, 1861, s. 1, v. 12, p. 281.

SEC. 5298. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

Power to suppress insurrection in violation of civil rights.
Apr. 20, 1871, s. 3, v. 17, p. 14.

SEC. 5299. Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.

Proclamation to insurgents to disperse.
July 29, 1861, s. 2, v. 12, p. 282.

SEC. 5300. Whenever, in the judgment of the President, it becomes necessary to use the military forces under this Title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time.

Title 70, chap. 2.

Treason.
Apr. 30, 1790, s. 1, v. 1, p. 112.

SEC. 5331. Every person owing allegiance to the United States who levies war against them, or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

SEC. 5332. Every person guilty of treason shall suffer death; or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years, and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.

Punishment of treason. July 17, 1862, ss. 1, 3, v. 12, p. 589.

SEC. 5333. Every person, owing allegiance to the United States and having knowledge of the commission of any treason against them, who conceals, and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor, or to some judge or justice of a particular State, is guilty of misprision of treason, and shall be imprisoned not more than seven years, and fined not more than one thousand dollars.

Misprision of treason. Apr. 30, 1790, s. 2, v. 1, p. 112.

SEC. 5334. Every person who incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or the laws thereof, or gives aid or comfort thereto, shall be punished by imprisonment not more than ten years, or by a fine of not more than ten thousand dollars, or by both of such punishments; and shall, moreover, be incapable of holding any office under the United States.

Inciting or engaging in rebellion or insurrection. July 17, 1862, s. 2, v. 12, p. 590. See sec. 5297.

That section twelve hundred and eighteen of the Revised Statutes of the United States, as amended by chapter forty-six of the laws of eighteen hundred and eighty-four, which section is as follows:

Mar. 31, 1896. 29 Stat. L., 84. Supp. R. S., vol. 2, p. 455.

"No person who held a commission in the Army or Navy of the United States at the beginning of the late rebellion, and afterwards served in any capacity in the military, naval, or civil service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion, shall be appointed to any position in the Army or Navy of the United States,"

Army and Navy. Confederate service not to disqualify. *Repeal of.* R. S. § 1218, and 1884, May 13, ch. 46, § 1 (1 Supp. R. S., 423.)

be, and the same is hereby, repealed.

SEC. 5335. Every citizen of the United States, whether actually resident or abiding within the same, or in any foreign country, who, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of, or resident within, the United States, and not duly authorized, who counsels, advises, or assists in any such correspondence, with such intent, shall be punished by a fine of not more than five thousand dollars, and by imprisonment during a term not less than six months, nor more

Criminal correspondence with foreign governments. Jan. 30, 1799, ch. 1, v. 1, p. 613. See sec. 1733, Diplomatic officers, and sec. 2113.

than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agent thereof for redress of any injury which he may have sustained from such government, or any of its agents or subjects.

Seditious conspiracy. July 31, 1861, ch. 23, v. 12, p. 284; Apr. 20, 1871, s. 2, v. 17, p. 13.

SEC. 5336. If two or more persons in any State or Territory conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof; or by force to prevent, hinder, or delay the execution of any law of the United States; or by force to seize, take, or possess any property of the United States contrary to the authority thereof; each of them shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars; or by imprisonment, with or without hard labor, for a period not less than six months, nor more than six years, or by both such fine and imprisonment.

Recruiting soldiers or sailors to serve against the United States. Aug. 6, 1861, s. 1, v. 13, p. 317.

SEC. 5337. Every person who recruits soldiers or sailors within the United States to engage in armed hostility against the same, or who opens within the United States a recruiting station for the enlistment of such soldiers or sailors, to serve in any manner in armed hostility against the United States, shall be fined not less than two hundred dollars, nor more than one thousand dollars, and imprisoned not less than one year, nor more than five years.

Enlistment to serve against the United States. Ibid., s. 2.

SEC. 5338. Every soldier or sailor enlisted or engaged within the United States, with intent to serve in armed hostility against the same, shall be punished by a fine of one hundred dollars, and by imprisonment not less than one year, nor more than three years.

Title 70, chap. 4.

Conspiring to intimidate party, witness, or juror. Apr. 20, 1871, s. 2, v. 17, p. 13.

SEC. 5406. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

Conspiracy to defeat enforcement of the laws. Ibid.

SEC. 5407. If two or more persons in any State or Territory conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws, each of such persons shall be punished by a fine of not less than five hundred nor more than

five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

Title 70, chap. 5.

All parties to a conspiracy equally guilty.

Mar. 2, 1867, s. 30, v. 14, p. 484; May 17, 1879, v. 21, p. 4.

See act of May 17, 1879, 21 Stat. L., 4, title "Fraud, perjury, etc.," amending this section.

SEC. 5440. If two or more persons conspire either to commit any offense against the United States, or defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars or to imprisonment for not more than two years, or to both fine and imprisonment, in the discretion of the court.

Title 70, chap. 7.

Conspiracy to prevent accepting or holding office under United States.

July 31, 1861, ch. 33, v. 12, p. 284; Apr. 20, 1871, s. 2, v. 17, p. 13.

See sec. 5407.

SEC. 5518. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

Conspiracy to deprive any person of the equal protection of the laws.

Apr. 20, 1871, s. 2, v. 17, p. 13.

See sec. 5336.

SEC. 5519. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

# CONSTRUCTION OF UNITED STATES STATUTES RELATING TO THE NAVY AND MARINE CORPS.

## DECISIONS OF FEDERAL COURTS AND OPINIONS OF THE ATTORNEYS-GENERAL OF THE UNITED STATES.

18 Stat. L., 203; act of Jan. 23, 1874, ch. 453; 15 A. G. Op., 80.

**Academy, Naval**, hazing at, punishable.

Act Mar. 3, 1879, ch. 183; 20 Stat. L., 420; 20 A. G. Op., 11; 21 A. G. (part 2), 297, Harmon, Jan. 24, 1896.

**Accounts, transportation of enlisted men.**—The methods adopted in settling accounts for transportation of the Army under the act cited are not applicable to accounts for the transportation of enlisted men of the Navy and Marine Corps.

An omission by Congress of some accounts from an act providing for the settlement of certain accounts for transportation shows that it was not the intention of Congress to make said act apply to all accounts for transportation furnished under preceding acts.

Rev. Stat., s. 4647, notes on U. S. Stats., Gould and Tucker, p. 249, note on s. 833.

**Accounts of district attorney and prize commissioner.**

Art. 29. See "Evidence." Green v. U. S., 9 Wall., 655; but see Jones v. U. S., 1 C. Cls., 833.

**Accused may testify.**

Act of Aug. 14, 1888; 19 A. G. Op., 221.

**Absence from command**, enlisted men of Navy and Marine Corps. The phrase, "by reason of absence from his command at the time he became entitled to his discharge," as used in the first section of the act cited, is to be regarded as equally applicable to the date when the term of enlistment of the applicant expired, and to the date when he would have received his discharge along with other enlisted men with whom he served, had he been present.

The proviso in the third section of the act cited is applicable to the latter section alone.

(a) 25 Stat. L., 119; 24 id., 51. See also H. Rp. No. 220, 1st sess., 50th Cong.

(a) *Relief to sailors and marines.*—The act under consideration clearly intended to grant the same relief to the sailors and marines of the late war that had been granted to the soldiers under like circumstances by the acts cited under (a).

**Absence on pay.**—The section of the act cited inhibits the heads of Departments and the Executive from granting leave of absence to Department clerks with pay and without charging the time against the period of absence allowed annually by law, in every case except that of the sickness of the clerk concerned.

22 Stat. L., 564; act Mar. 3, 1883, ch. 128, s. 4; 20, A. G. Op., 303, Miller, Jan. 26, 1892. Chisholm v. U. S., decided Jan. 11, 1892, by Court of Claims.

(*a*) *Prohibited.*—The appropriation act cited under (*a*) prohibits any further leave of absence on pay when the employee has before July 1, 1893, been absent for a longer period than ninety days during the calendar year 1893.

(*a*) Act. Mar. 3, 1893, ch. 211, s. 5; 20 A. G. Op., 607; Olney, June 2, 1893; also 20 A. G. Op., 670, Olney, Oct. 12, 1893.

**Active list, of the Navy, etc.**—That the active list of the Medical Corps of the Navy shall hereafter consist of fifteen medical directors, fifteen medical inspectors, fifty surgeons, and ninety assistant and passed assistant surgeons.

22 Stat. L., 285, act Aug. 5, 1882.

That the active list of the Pay Corps of the Navy shall hereafter consist of thirteen pay directors, thirteen pay inspectors, forty paymasters, twenty passed assistant paymasters, and ten assistant paymasters.

That the active list of the Engineer Corps of the Navy shall hereafter consist of ten chief engineers with the relative rank of captain, fifteen chief engineers with the relative rank of commander, forty-five chief engineers with the relative rank of lieutenant-commander or lieutenant, sixty passed assistant engineers, and forty assistant engineers, with the relative rank for each as now fixed by law; and after the number of officers in the said grades shall be reduced as above provided, the number in each grade shall not exceed the reduced number which is fixed by the provisions of this act for the several grades.

*Reduction of officers not to reduce rank.*—That no officer now in the service shall be reduced in rank or deprived of his commission by reason of any provision of this act reducing the number of officers in the several staff corps: *Provided*, That no further appointments of cadet engineers shall be made by the Secretary of the Navy under section three of the act of eighteen hundred and seventy-four [by which such appointments shall not exceed twenty-five each year].

Act of 1874, s. 3.

*Vacancies in grades.*—That as vacancies shall occur in any of the grades of the Medical, Pay, and Engineer corps of the Navy no promotion shall be made to fill the same until the number in said grade shall be reduced below the number which is fixed by the provisions of this act for such grade.

*Half of vacancies, how filled.*—Hereafter only one-half of the vacancies in the various grades in the line of the Navy shall be filled by promotion until such grades shall be reduced to the following numbers, namely: Rear-admirals, six; commodores, ten; captains, forty-five; commanders, eighty-five; lieutenant-commanders, seventy-four; lieutenants, two hundred and fifty; masters, seventy-five; ensigns, seventy-five; and thereafter promotions to all vacancies shall be made, but not to increase either of said grades above the numbers aforesaid.

*Rank and pay of officers on retired list.*—Hereafter there shall be no promotion or increase of pay in the retired list of the Navy, but the rank and pay of officers on the retired list shall be the same that they are when such officers shall be retired.

*Discharged with not more than one year's pay.*—That whenever, on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and heard upon the charges against him, he shall not be placed on the retired list of the Navy, and if the finding of the board be approved by the President, he shall be discharged with not more than one year's pay.

*Traveling abroad.*—And officers of the Navy traveling abroad under orders hereafter issued shall travel by the most direct route, the occasion and necessity for such order to be certified by the officer issuing the same, and shall receive in lieu of the mileage now allowed by law only their actual and reasonable expenses, certified under their own signatures and approved by the Secretary of the Navy.

*Benefits of actual service, whether as regular or volunteer.*—And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers.

*Insufficiency of appropriation for pay of officers, how made up.*—And should the sums appropriated for the pay of the officers on the active and retired lists of the Navy be insufficient, then and in that case the Secretary of the Navy is hereby authorized to use any and all balances which may be due or become due to "pay of the Navy" from the other bureaus of the Department for that purpose.

(a) 22 Stat. L., 472. See "Naval cadets," p. —.

(a) *Title midshipman changed to ensign.*—The act of March 3, 1883, provides for ninety-one midshipmen, the title of which grade is hereby changed to ensign, and the midshipmen now on the list shall constitute a junior grade of, and be commissioned as, ensigns, having the same rank and pay as now provided by law for midshipmen, etc.

Rev. Stat., s. 1362; 16 A.G.Op., p. 417; Wood v. U.S., 15 C.Cls.R., 151; cf. Rutherford v. U.S., 18 C. Cls. R., 339; McClure v. U.S., id., 347.

**Admiral**, in section 1362, Revised Statutes, edition 1878, expresses title, rank, and grade, as also does vice-admiral.

**Advanced for gallantry, etc.**—Any officer of the Navy may, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism. The statute cited adds: "And the rank of officers shall not be changed, except in accordance with the provisions of existing law, and by and with the advice and consent of the Senate."

Advancement in rank under this section is not one of the cases within Revised Statutes, sections 1561 and 1562, entitling the officer to pay from a date anterior to his commission.

Rev. Stat., s. 1506; 20 Stat. L., ch. 260, p. 144; Young v. U. S., 16 C. Cls. R., 145.

**Apothecary, rations for.**—An apothecary in the Navy doing detail duty at the marine barracks is not "attached to the ordinary of a navy-yard" and is not entitled to a daily ration under this section.

Rev. Stat., s. 1579; Herbert v. U.S., 21 C.Cls.R., 53.

(a) *"Ordinary of a navy-yard."*—"Ordinary of a navy-yard" here refers to ships laid up in ordinary at a navy-yard, and this section authorizes allowances of a ration to petty officers and seamen attached to and doing duty on shipboard, though not upon a seagoing vessel, but not to the apothecary of the Naval Academy when engaged on shore duty.

(a) Button v. U.S., 20 C.Cls.R., 423.

**Appointments.**—Under the statute cited the vacancies in the lowest grade of commissioned officers in the Line and Marine Corps must be filled from the final graduates of the Line and Marine Corps at Annapolis; so also as to vacancies in the Engineer Corps. Vacancies in the Line and Marine Corps can not be filled from the Engineer Corps division, vice versa.

Act Mar. 3, 1889, ch. 396; 20 A. G. Op., 615, Olney, June 10, 1893.

*Honorably discharged sailors to be preferred for appointment to civil offices.*—"Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices."

Rev. Stat., s. 1754; 19 A.G. Op., 318, Miller, May 24, 1889.

*Duty of those making appointments to give their preference.*—By the section cited it is made the duty of those making appointments to civil offices to give a preference, other things being equal, to the class of persons named in that section; but the matter of capacity and personal fitness for the place is for the determination of the appointing power.

**Appointment of cadets.**—A cadet, nominated to the Naval Academy upon the recommendation of a Member of the House of Representatives who, since the recommendation and nomination, has been unseated by contest of election, can not be lawfully deprived of his place if he passes his examination.

21 A.G. Op., 342, Harmon, May 7, 1896; 10 A.G.Op., 46, Bates; 10 id., 494; 21 id., 164.

(a) *Notification of vacancy.*—The Secretary of the Navy is not to revoke such a nomination and notify the newly seated Member that a vacancy occurs. He has no right to call for a new recommendation, except under the section cited, when the candidate fails to pass his examination.

(a) Rev. Stat., s. 1514.

(b) Amended by act July 26, 1894 (2 Supp., 206); Rev. Stat., s. 1516.

(b) *Recommendation for appointment.*—The notice provided for by section 1514, cited, as amended, was intended to be given to the Member of Congress actually sitting, and the recommendation provided by said section was intended to be made by such Member, and action duly taken thereon should not be affected by any subsequent event, except the failure of the nominee to pass his examination.

(c) 10 A. G. Op., 46.

(c) *Rights of Members of Congress.*—Until a decision is made which unseats them Members of Congress whose seats are contested are considered to be in all respects endowed with the same rights, powers, and privileges as other Members.

Act Mar. 2, 1895, ch. 186; 21 A. G. Op., 164, Olney, Apr. 24, 1895.

*Recommendations for appointment.*—The proviso to the naval appropriation act cited, permitting and authorizing every Representative or Delegate in Congress "whose district or Territory is not now represented at the Naval Academy" to make recommendation on or before March 4, 1895, of a candidate for appointment as a cadet at the Naval Academy of the United States, was intended to apply to Members of the then existing Fifty-third Congress.

Rev. Stat., ss. 1513, 1514.

To be valid, it was essential that a recommendation should be made before 12 o'clock noon of March 4, 1895; and, in consequence, these recommendations considered in the opinion are held to be ineffective to deprive the successors in office of the signers of the recommendations of the general privileges granted to them by the sections cited.

Act Aug. 3, 1886, ch. 849; 19 A. G. Op., 235.

**Armament, naval vessels.**—The words "exclusive of armament," as used in the first section of the act cited, are not to be understood as excluding the offensive armament, such as guns, torpedoes, etc., *only;* the term "armament" comprehending, besides those articles, such shields and protections as are directly and necessarily connected with the efficient and safe working thereof.

Rev. Stat., s. 1766; 2 A. G. Op., 420, 593.

**Arrears, officers in.**—A naval officer in the service of the Government is not deprived of his right to the rations allowed by law, or the amount of money for which they may be commuted, although he is in arrears to the United States.

Rev. Stat., s. 1624; Articles for the Government of the Navy, 24, 43, 44; 19 A. G. Op., 472, Miller, Jan. 18, 1890.

**Arrest, two may be made in an emergency.**—Upon consideration of the articles and statute cited for the government of the Navy: *Held,* That there may be two arrests in an emergency, or upon discovery of the alleged wrongdoing, with a view to a preliminary examination, and, if necessary, the formulation and specification of charges.

(a) *Arrest for trial.*—*Held, further,* That article 43 in the provision declaring that "the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest," has reference to the arrest for trial, and not the arrest in the first instance.

Rev. Stat., s. 1624; re Bogart, 2 Sawyer, 396; Green v. U. S., 9 Wall, 655. (See 'Courts-martial.')

**Articles for the Government of the Navy.**—Congress has constitutional power to provide for punishment of offenses in the naval service by courts-martial without indictment or jury trial.

*Charges preferred by others than the Secretary.*—The restrictions of the article cited apply only to cases of charges preferred by others than the Secretary of the Navy. Art. 43; 4 A. G. Op., 410.

*Commissioned officers.*—"Commissioned officers" here include volunteer naval officers appointed under the act cited. Art. 39; 10 A. G. Op., 522; act July 24, 1861.

(*a*) *Noncombatants qualified to serve on courts-martial.*—Chaplains, surgeons, paymasters, and other noncombatant officers, being commissioned officers with fixed rank, are qualified to act as members of a court-martial. (*a*) Winthrop's Mil. Law, vol. 1, p. 88.

(*b*) *Irregularity of court-martial.*—A sentence of dismissal, imposed by an irregular court-martial, when approved and carried into effect, is a consummated fact, whether legal or not, and the officer convicted can only be restored to the service by appointment. Even if the court had no authority to exclude him under the circumstances, the irregularity could not be taken advantage of after its action is approved. (*b*) 7 A. G. Op., 98; 6 id., 369. See note to s. 1342.

(*c*) *False imprisonment, action for.*—When the court-martial having jurisdiction over the subject-matter finds a seaman charged with desertion guilty of attempting to desert, an action of trespass for false imprisonment will not lie against the ministerial officer who executes its sentence. It is only where the court has no jurisdiction of the subject-matter, or, having jurisdiction, violates some rules adopted by law for its proceedings, whereby they are rendered *coram non judice*, that such an action will lie. (*c*) Dynes *v.* Hoover, 20 How., 65, 83.

(*d*) *Depositions objectionable.*—Naval courts-martial are not empowered to dispense with the attendance of witnesses and receive depositions if the officer who preferred the charges objects. (*d*) 2 A. G. Op., 343.

*Corrupting a marine guard.*—The offense of corrupting a marine guard by bribery may be punished by imprisonment in the penitentiary of the District of Columbia, at hard labor, for a term of years, that punishment not being against the usages of the service. Art. 5; 10 A. G. Op., 158. See 9 id., 80.

*Courts-martial.*—Civil engineers in the Navy are subject to the jurisdiction of naval courts-martial. 15 A. G. Op., 165.

(*a*) *Secretary may reconvene.*—The Secretary of the Navy, after a naval court-martial has returned its proceedings to him and he has adjourned it until further orders, may reconvene it to consider its proceedings. (*a*) Smith *v.* Whitney, 116 U. S., 167.

*Damages for personal ill usage to captured crew.*—A prize court may award damages for personal ill usage when captors willfully injure a captured crew. Art. 17, The Lively, 1 Gall., 315.

*Desertion, relief from.*—Provision was made by the statute cited for the relief of certain appointed or enlisted men of the Navy and Marine Corps, who served in the late war, from the charge of desertion. Art. 6, 25 Stat. L., p. 442, ch. 890.

*Discretionary power.*—"Whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts." Art. 24; Story, J., in Martin *v.* Mott, 12 Wheat, 31.

(*a*) *Obedience to duty.*—"Every public officer is presumed to act in obedience to his duty, until the contrary is shown." (*a*) Id.

(b) Act of Apr. 23, 1800, 2 Stat. L., 45, art. 3; Wilkes v. Dinsman, 7 How., 89.

(b) *Punishment of refractory seamen.*—The statute cited provides that a refractory seaman, if a private, may "be put in irons, or flogged, at the discretion of the captain, not exceeding twelve lashes; but if the offense requires severer punishment, he shall be tried by a court-martial, and suffer such punishment as said court shall inflict." Every successive disobedience of orders was a new offense, subjecting the offender to twelve additional lashes, at the discretion of the commanding officer; his judgment was conclusive as to whether or not the offense required a severer punishment; and he could not only cause corporal punishment to be inflicted, but might resort to any reasonable measures necessary to insure obedience, and even imprison the refractory party on shore, if he did so without any malice.

(c) 12 Stat. L., p. 603; act July 17, 1862.

(c) *Flogging.*—The later statute cited says that "in no case shall punishment by flogging be inflicted, nor shall any court-martial adjudge punishment by flogging."

Art. 49; U. S. v. Cutler, 1 Curtis, C. Cls. R., 501; 12 Stat. L., p. 603, forbidding flogging; 17 Stat. L., 261, word "corporal" stricken from art. 45.

*Act abolishing not penal.*—In the case cited it was held that the act of 1850, abolishing flogging in the Navy and in vessels of commerce, was not a penal statute on which an indictment could be founded.

(d) 5 Stat. L., 153; Dinsman v. Wilkes, 12 How., 390. See also Jecker v. Montgomery, 18 How., 110, 123, where the rule laid down in Dinsman v. Wilkes is followed.

(d) *Detaining a marine after expiration of enlistment.*—Under the act of March 2, 1837, authorizing the commander of a squadron to detain a marine, if in his opinion public interest required it, after the term of his enlistment had expired, the commander's opinion on the question of public interest was conclusive, and if the marine did not conform thereto, he was subject to punishment. The commander was also the judge of the degree of severity of punishment necessary to suppress disobedience and insubordination, and he was not liable to an action for mere error in judgment, even though the jury were of the opinion that milder measures would have accomplished the object. But he was bound to exercise his best judgment and to act conscientiously and without malice.

(e) Art. 19, 21 Stat. L., p. 338; Rev. Stat., ss. 1418, 1419, and 1420; 21 Stat. L., p. 3, ch. 5.

(e) *Enlisting deserters, minors, etc.*—The statute cited amends sections 1418, 1419, and 1420 of the Revised Statutes by striking out the word "*fifteen*" and substituting the word "*fourteen.*" The original statute limiting the age to "sixteen" was amended by act of May 12, 1879, cited, to "fifteen," and then as above. Both statutes cited adds the words "punished as a court-martial may direct."

(f) Art. 22; 16 A. G. Op., 578.

(f) *Jurisdiction of courts-martial.*—This does not confer upon a court-martial general criminal jurisdiction, but only jurisdiction over those offenses not specified in the preceding articles, which are injurious to the order and discipline of the Navy.

16 A. G. Op., 578.

Under this article a naval general court-martial can take jurisdiction of an assault committed on board a naval vessel when she was under way in the Thames River, opposite New London, Conn., by a coal heaver in the naval service upon a second-class fireman in such service, from the effect of which the latter died, and try the accused upon a charge of manslaughter.

(g) *Loss of pay by reason of confinement or suspension.*—Officers and men in the naval service do not incur any forfeiture or loss of pay by confinement or suspension from duty under sentence of a court-martial unless it is so specified in the sentence. (g) Art. 33; 15 A. G. Op., 175.

(h) *Remission of part of sentence.*—A part of such sentence may be remitted in whole or in part by the proper officer. (h) Id.

(i) *Officers, meaning of.*—"Officers" in the article cited means, at most, warrant and commissioned officers. (i) Art. 36. (See Notes on U. S. Statutes, p. 416, note on s. 1413); 15 A. G. Op., 634.

(j) *Petty officers.*—Petty officers are included in article 30. (j) Art. 30.

(k) *Acting gunners.*—Articles 36 and 37 do not apply to acting gunners, who are not officers and are liable to dismissal at the will of the Secretary of the Navy. (k) 15 A. G. Op., 564.

(l) *Cadets at Naval Academy.*—The article cited does not extend to cadets at the Naval Academy, who may be dismissed from the Academy and the service without trial by court-martial. (l) Art. 36; 15 A. G. Op., 634.

(m) *Power of the President to dismiss prior to passage of article 36.*—Prior to its passage the President might dismiss an officer of the Navy upon any cause which seemed sufficient to him. (m) 16 A. G. Op., 315.

(n) *Engineer cadet.*—A naval cadet engineer is an officer within this section. (n) U. S. v. Perkins, 116 U. S., 483; 15 A. G. Op., 165.

(o) *Oath administered to court and judge-advocate.*—Where, at the organization of a naval court-martial, each member of the court was first sworn by the judge-advocate, who was then sworn by the president of the court, the fact that the oath was not administered as required by this article was held not to invalidate the proceedings. (o) Art. 39; 13 A. G. Op., 374.

(p) *Pay of an officer dismissed and restored.*—A naval officer dismissed from the service and restored to the same under the article cited is not to be allowed more than pay as on leave for six months from the date of dismissal, unless he continues to demand, as often as once in six months, a trial as here provided. This authorizes payment only from the time a promoted officer takes rank in the higher grade. (p) Art. 37; act June 22, 1874, ch. 302, s 2. 18 Stat. L., 191; Adamson v. U. S., 19 C. Cls. R., 623; Hunt v. U. S., 116 U. S., 396.

(q) *Demanding trial.*—The demand of a trial as often as once in six months is not excused by illness. (q) 15 A. G. Op., 569.

(r) *Petty officers included in article cited.* (r) Art. 30; 15 A. G. Op., 634.

(s) *Summary courts-martial.*—The act cited, which established summary courts-martial in the Navy, did not take away the previously existing power of the commander of a vessel to reduce seamen to inferior rate for incompetency. (s) Act Mar. 2, 1855; 10 A.G.Op., 168.

(t) *Reconsideration of judgment of a court-martial.*—If the approval of the President is required to the sentence of a court-martial before it can be carried into effect, he may direct a reconsideration of the judgment rendered. (t) Art. 53; 4 A. G. Op., 19.

(u) *Acting master's mates, sentence affecting.*—An acting master's mate is neither a commissioned nor a warrant officer under this article, and a sentence dismissing him from the service may be lawfully carried into execution without the approval of the President or the Secretary of (u) A. G. Op., 251.

the Navy. If the latter approve it, the President has no power after it has been carried into execution to set aside the Secretary's order and restore the party to the service.

(v) A. G. Op., 508.

(v) *Approval of sentence by the Secretary under act of 1852.*—Under the article of war in force in 1852 the Secretary of the Navy has power to approve the sentence of a court-martial convened by his orders if such sentence did not extend to the loss of life or to the dismissal of a commissioned or warrant officer.

(w) 10 A.G.Op., 168; Ex parte Reed, 100 U. S., 13; U. S. v. Bogart, 3 Ben., 257.

(w) *Regulations established by the Secretary have force of law.*—The regulations established by the Secretary of the Navy, with the President's approval, have the force of law, and the regularly appointed clerk of a paymaster in the Navy is a person in the naval service and subject to this section.

(x) Art. 50; A. G. Op., 338.

(x) *Revise sentence.*—If a general court-martial, on being ordered to reassemble by the Secretary of War for the purpose of revising its sentence, is not attended by all its members, its jurisdiction to revise such sentence exists.

Rev. Stat., ss. 4787, 4788, 4790, amended by act Mar. 3, 1891; 20 A. G. Op., 83, Miller, May 4, 1891.

**Artificial limbs.**—The amendment cited having provided that soldiers and seamen wounded in the rebellion, who had been entitled to receive artificial limbs every five years, shall now receive the same every three years, and a question having arisen as to whether sections 4788 and 4790, cited, providing for a money commutation in place of said limb stood in the same relation to the amended section, 4787, as to the original section and whether now such money commutation can be had every three years, it is decided that it can be had.

(a) Act July 17, 1870; 20 A. G. Op., 83.

(a) *Period from which the three years run.*—The word "thereafter," now appearing in section 4787, cited, refers not to July 17, 1870, but to the time when the artificial limb shall have been furnished after that date; consequently the periods of three years run from the time when such limb was furnished, and not from July 17, 1870.

Act Mar. 3, 1883; Stat. L., 26, p. 254.

**Assistant Secretary of the Navy.**—The statute cited repeals the provision of August 5, 1882, authorizing the appointment of an Assistant Secretary of the Navy. A new act of July 11, 1890, chapter 667, page 254, authorizes the President, with the advice and consent of the Senate, to appoint from civil life an Assistant Secretary of the Navy, at a salary of $4,500.

24, Stat. L., 157; act July 26, 1886.

**Balances covered into the Treasury.**—The statute cited provides that all balances of moneys appropriated for the pay of the Navy or pay of the Marine Corps for any year existing after the accounts for said year shall have been settled shall be covered into the Treasury.

21 A. G. Op., 186, Olney, June 1, 1895. (This opinion does not conflict with 20 Op., 1, distinguished) (20 Op., 728).

**Bids, withdrawal of.**—After a bid for the construction of public works has been accepted the bidders have not the right to withdraw their proposal merely because of a mistake on their part which was not mutual and which was due to their negligence.

22 Stat. L., pp. 291, 293, 478.

**Board, Naval Advisory,** authorization for.

**Bond of disbursing officer.**—The Secretary of the Navy has power under the section cited to approve a pay officer's bond in which the sureties are corporations, or a corporation joined with a natural person, if he deems such sureties sufficient.

Rev. Stat., s. 1883; 19 A.G.Op., 175, Aug. 2, 1888, G. A. Jenks, acting A. G.

**Books and records of bureaus, custody of.**—A part of section 8 of the cited act was omitted from the revision as conferring powers exhausted by their first exercise.

Rev. Stat., s. 420; act Aug. 31, 1842; 1 Com. D., 234.

**Boys,** enlisting same, age limit, etc. In the section cited, and in sections 1419, 1420 (21 Stat. L., chapter 5), as amended by 21 Stat. L., 331, chapter 73, changes "sixteen" to "fourteen."

Rev. Stat., s. 1418; 1 Com. D., 695.

(*a*) *Marine Corps, part of the Navy.*—Marine Corps is a part of the Navy, not of the Army, and that minors over eighteen years may be enlisted therein without the consent of parents or guardians was upheld by the Federal courts.

(*a*) In re Doyle, 18 F. R., 369; cf. U. S. *v.* Bainbridge, 1 Mason, 71; Wilkes *v.* Dinsmore, 7 Howard, 89; Re Hayes, 15 Rep., 259; Re McNulty, 2 Lowell, 270; U. S. *v.* Stewart, Crabbe, 265; Re Gregg, 15 Wis., 479; Re Shugru, 3 Mackey, 323; Re Webb, 24 Howard, Pr. (N. Y.), 3247; R. Collins, 25 id., 157.

(*b*) *Parents' consent.*—The parents' consent might be given after enlistment.

(*b*) Act of Jan. 20, 1813; Commonwealth *v.* Camac, 1 Serg. & R., 87.

(*c*) *Allowed a ration.*—Boys attached to any United States vessel or station and doing duty thereon shall be allowed a ration, or commutation thereof in money, etc.

(*c*) 23 Stat. L., 291; act Jan. 30, 1885.

**Buildings rented.**—The statute cited requires heads of Departments to submit to Congress each year a statement of the number of buildings rented by their respective departments, the purposes for which rented, and the annual rental of each.

22 St., 562.

**Bureau officers, assistant chief.**—A naval officer assigned to duty as an assistant to the chief of a bureau in the Navy Department is not authorized by the first section, cited, in case of the death, resignation, absence, or sickness of the latter (where the President has not otherwise directed, as provided by section 179, cited), to perform the duties of such chief until his successor is appointed or until his sickness or absence shall cease.

The phrase "assistant or deputy of such chief," etc., in section 178, is to be construed as including an assistant or deputy only whose appointment is specifically provided for by statute.

Rev. Stat., ss. 178, 179; 19 A. G. Op., 503, Miller, Mar. 5, 1890.

**Cadets,** *age of, maximum and minimum.*—That after the fourth day of March, eighteen hundred and eighty-nine, the minimum age of admission of cadets to the Academy shall be fifteen years and the maximum age twenty years. (March 3, 1889.)

Supplement, vol. 1, p. 697. (25 Stats. 1, 878.)

*Cadets,* at the Naval Academy have neither warrants nor commissions, and are not "officers" in the usual Federal legislative sense, as, for example, as it is employed in section 1410, Revised Statutes.

Rev. Stat., s. 1410; 15 A.G.Op., 561, 635; Grambs's Case, 23 C. Cls. R., 420.

(a) 23 Stat., L., 291.

(a) *Entitled to a ration, etc.*—Naval cadets attached to any United States vessel or station and doing duty thereon shall be allowed a ration or commutation thereof, etc.

22 Stat. L., 285; act Aug. 5, 1882, ch. 391; 18 A. G. Op., 373, Garland, Mar. 3, 1886.

**Cadet engineers.**—The cadet engineers in the Navy (graduates of the class of 1881 and 1882), who were discharged under a misconstruction of the act of August 5, 1882, chapter 391, not having been legally removed, are still the lawful incumbents of their respective offices, and should be recognized as in the immediate line of promotion, in their proper order, to fill the vacancies that may occur in the office of assistant engineers.

(a) Leopold v. U.S., 18 C. Cls. R., 546

(a) *Not retroactive.*—The court held in the case cited that the statute cited "is prospective and not retroactive."

(b) Rev. Stat., s. 1823; 18 Stat. L., 191; act June 22, 1874, ch. 392.

(b) *Appointed annually.*—The act of June 22, 1874, repeals so much of this provision as provides that cadet engineers, not to exceed fifty in number, shall be appointed by the Secretary of the Navy, and provides, repealing inconsistent acts, that "cadet engineers shall hereafter be appointed annually by the Secretary of the Navy, and the number appointed each year shall not exceed twenty-five."

(c) Rev. Stat., s. 1524; 18 Stat. L., 17; act Feb. 24, 1874, ch. 35, s. 2.

(c) *Length of course.*—The section of the Revised Statutes cited reads: "The course of the cadet engineers shall be four years, including two years of service on naval steamers." The act of February 24, 1874, cited, enlarges the course of instruction. It requires that the course shall be four years instead of two.

(d) 22 Stat. L., 286, ch. 391; Redgrave v. U. S., 20 C. Cls. R., 226; Leopold v. U. S. 18, id., 546.

(d) *Were not made naval cadets.*—Cadet engineers who finished their four years' course, passed their examination, and received their diplomas before the statute of 1882, chapter 391, was enacted, were not made naval cadets by that act, and were entitled to the pay provided by this section.

Rev. Stat., s. 513; amended by 20 Stat. L., p. 143, ch. 260.

**Cadet midshipmen, number of.**—The last statute cited strikes out "annually" in last line and adds the provision "that there shall not be at any time more in said Academy appointed at large than ten; but the provisions of this section shall not be construed to apply to cadet midshipmen appointed at large now in said Academy."

(a) Rev. Stat., s. 1512; 22 Stat. L., 285.

(a) *Change of title of.*—The act of August 5, 1882, the latter citation under "*a*," changes the title of cadets from "cadet midshipmen" to "naval cadets."

(b) 19 Stat. L., 390.

(b) *Pay of.*—By statute of March 3, 1877, chapter 111, cadet midshipmen, when, during their course of instruction, they are at sea in other than practice ships, each receive as annual pay not exceeding $950.

Rev. Stat., s. 1395; 16 Stat. L., 536; 1 Com. D., 691.

**Chaplains**, relative rank of, as fixed by act of March 3, 1871, chapter 117, but which accounts for only 18 in number, does not necessarily fix the limit at that. This does not seem to be the intention of the act.

Rev. Stat., s. 421; act July 5, 1862; act Mar. 3, 1871; Smith v. Whitney, 116 U. S., 179; 1 Com. D., 235. See act July 26, 1894.

**Chiefs of bureaus.**—The cited statutes are treated in the case cited so that the President may make a given appointment either from the class indicated by the act of 1862 or from that indicated by the act of 1871, as he judges best.

(a) *Tenure of office as such.*—The chief of a bureau in the Navy Department can not lawfully hold over after the expiration of the term for which he was appointed.

(a) Rev. Stat., s. 421; 17 A. G. Op., 648, Brewster; U. S. v. Eckford's, Executors (1 How., 250). See also 14 Op., 262, 263.

The general rule is that where Congress has not authorized the officer to hold over his incumbency must be deemed to cease at the end of his term, though no appointment of a successor may then be made.

(b) *To fill vacancy.*—The term of office of the chief of a bureau appointed to fill a vacancy, whose commission was limited to the end of the next session of the Senate, and who at the next session (extra) was nominated by the President for the term of four years and was confirmed at the ensuing session of the Senate, begins with his confirmation, notwithstanding language to the contrary in the nomination and confirmation.

(b) 16 A. G. Op., 657.

**Chief engineers, grades, promotions.**—The relative rank among the chief engineers changes with their seniority in that grade, but such change may be indicated by a notification from the Secretary of the Navy. No examination or appointment or confirmation by the Secretary is necessary.

Rev. Stat., ss. 1390, 1476, 1477, 1478, 1479, 1480; 20 A. G. Op., 358, Miller, Mar. 18, 1892.

**Chinese.**—The laws now in force in regard to Chinese immigration are as follows:

Review of laws relating to Chinese immigration.

R. S., §§ 2158–2163, prohibit the "cooly" trade by citizens of the United States or in vessels of the United States, but citizens and vessels are permitted to engage in the voluntary emigration of Chinese.

Certain acts still in force.

By 1875, March 3, ch. 141 (1 Supp. R. S., 86), the importation of Chinese and others for immoral purposes was forbidden, the punishment for engaging in the "cooly" trade was made more severe, contracts for service in the United States were declared void, and the importation of women for prostitution was made a crime. These provisions of law do not appear to have been repealed or superseded by subsequent legislation in regard to Chinese immigration.

Identification certificates, passports, etc.

The act of 1882, March 6, ch. 126 (1 Supp. R. S., 342), suspended the coming of Chinese laborers for ten years, and provided in accordance with the stipulations of the treaty of 1880, November 17 (22 Stat. L., 826), for the issuance of identification certificates to enable laborers already in the United States to go and return and for passports to other Chinese, not laborers, desiring to visit the United States.

Provisions of act of 1882.

The provisions of the act of 1882 were made more definite and strict by the act of 1884, July 2, ch. 220 (1 Supp. R. S., 458). This includes a number of important amendments. The act of 1882, as amended by the act of 1884, is printed in 112 U. S., 543, and 118 U. S., 627, where it appears as an appendix to the opinions of the Supreme Court.

Act of 1888.

The next legislation as to Chinese immigration was the act of 1888, Sept. 13, ch. 1015 (25 Stat. L., 476). Its first section provided that from the date of the exchange of the ratifications of the pending treaty between the United States and China, signed on March 12, 1888, it should be

unlawful for any Chinese person to enter the United States "except as hereinafter provided." The fifteenth section of the act repealed the acts of 1882 and 1884, the repeal "to take effect upon the ratification of the pending treaty as provided in section one of this act." Before the ratifications of this treaty were exchanged the act of 1888, Oct. 1, ch. 1064 (1 Supp. R. S., 625), was passed, making void the certificates of identity already issued under the acts of 1882 and 1884. The ratifications of the treaty were never thereafter exchanged.

The act of 1888, Sept. 13, ch. 1015, was omitted from 1 Supp. R. S., but is inserted in second edition, p. 141. See note there, showing the various opinions upon the question whether any part of the act of 1888, Sept. 13, ch. 1015, went into effect.

Special provision.

A special provision for the admission of Chinese persons in connection with the World's Columbian Exposition was made in joint resolution of 1892, August 5, No. 33 (27 Stat. L., 402).

Decisions.

Numerous decisions have been made by the Federal courts upon the Chinese immigration acts. These decisions, so far as reported in the United States Reports and the Federal Reporter, are as follows:

Decisions relating to Chinese immigration. Prior to 1888. Supreme Court.

Reentry.

*Chew Heong* v. *United States*, 112 U. S., 536. Section 4 of the act of 1882, May 6, as amended by 1884, July 5, requiring a certificate of identification of a Chinese laborer as the "only evidence permissible to establish his right of reëntry," does not apply to those residing here at the date of the treaty of Nov. 17, 1880, who left before May 6, 1882, and remained until after July 5, 1884.

Chinese entitled to protection.

*Yick Wo* v. *Hopkins*, 118 U. S., 356. A municipal ordinance is unconstitutional if it makes arbitrary discriminations founded on differences of race. Chinese subjects residing in the United States are entitled to the protection of the Constitution and laws. This case explains *Barbier* v. *Connolly*, 113 U. S., 27, and *Soon Hing* v. *Crowley*, 113 U. S., 703, which held other municipal regulations to be valid. (See also *In re Quang Woo*, 13 Fed. Rep., 229.)

Effect of losing certificate of identity.

*United States* v. *Jung Ah Lung*, 124 U. S., 621. A Chinese laborer, who had received a certificate of identity under the act of May 6, 1882, left the country, Oct. 24, 1882. He lost the certificate, and on arriving in Sept., 1885, was detained in port by direction of the customs authorities. On a writ of habeas corpus, his identity was established and he was discharged from custody by the district court. The Supreme Court held that his case was to be governed by the act of 1882, and not by the act of 1884. The judgment of the circuit court, affirming the district court (25 Fed. Rep., 141), was affirmed.

Other Federal courts.

*In re Ah Sing*, 13 Fed. Rep., 286; *In re Ah Tie*, 13 Fed. Rep., 291 (Cir. C., Cal.). A Chinese laborer employed on an American vessel, even if during a voyage temporarily off the vessel in a foreign port, is not excluded by the act of 1882. (14 Fed. Rep., 44.)

Certificates issued by Chinese Government.

*In re Low Yam Chow*, 13 Fed. Rep., 605 (Cir. C., Cal.). The certificate to be issued by the Chinese Government,

required by the act of 1892, does not apply to Chinese merchants resident in other countries than China.

Chinese sailors.

*In re George Moncan*, 14 Fed. Rep., 44 (Cir. C., Oreg.). This case holds that a sailor is not a laborer within the meaning of § 1, act of May 6, 1882; that the act does not apply to Chinese sailors on a vessel touching at a port in the United States when she calls for orders or for cargo for foreign port, but their presence in the country is unlawful if they leave the vessel in port or do not depart with her; and that a Chinese person on an American vessel prior to May 6, 1882, was then within the United States. (13 Fed. Rep., 286, 291; 36 Fed. Rep., 440, 441.)

Chinese actor not a laborer.

*In re Ho King*, 14 Fed. Rep., 724 (Dist. C., Oreg.). A Chinese actor or theatrical performer is not a laborer. The certificate provided in § 6 of the act of 1882 is not the only competent evidence that a Chinese person is not a laborer.

Chinese immigration. Decisions of Federal courts.

*United States* v. *Douglas*, 17 Fed. Rep., 634 (Cir. C., Mass.). The act of 1882 does not include, under the term Chinese laborers, Chinese subjects of Great Britain. (See *contra*, 18 Fed. Rep., 28.)

Chinese British subjects.

*In re Ah Lung*, 18 Fed. Rep., 28 (Cir. C., Cal.). A Chinese laborer, a subject of Great Britain, is excluded under the act of 1882. (See *contra*, 17 Fed. Rep., 634.)

When not excluded.

*In re Chin A On*, 18 Fed. Rep., 506 (Dist. C., Cal.). A Chinese laborer who resided in the United States on Nov. 17, 1880, but went to China prior to May 6, 1882, is not excluded by the act of that date. (See 112 U. S., 536; 19 Fed. Rep., 184, 490.)

When excluded.

*In re Pong Ah Chee*, 18 Fed. Rep., 527 (Dist. C., Cal.). A Chinese laborer who left the United States after May 6, 1882, without procuring a certificate, is excluded. (19 Fed. Rep., 490; 21 Fed. Rep., 386; 23 Fed. Rep., 441.)

Certain Chinese may land on proper proof.

*In re Tung Yeong*, 19 Fed. Rep., 184 (Dist. C., Cal.). Chinese laborers in the United States at the date of the treaty of 1880, who departed before the act of May 6, 1882, may land without a certificate on proper proof. (See 112 U. S., 536; 18 Fed. Rep., 506; 19 Fed. Rep., 490.)

Certain Chinese must have certificate required by act.

*In re Leong Yick Dew*, 19 Fed. Rep., 490 (Cir. C., Cal.). Chinese laborers who left the country after May 6, 1882, can not be readmitted upon any other evidence of prior residence, excepting the certificate required by the act. (18 Fed. Rep., 52.) Those who left before May 6, 1882, may return upon proof of prior residence by competent evidence. (112 U. S., 536; 18 Fed. Rep., 506; 19 Fed. Rep., 184.)

Certificate admits only person described.

*In re Ah Quan*, 21 Fed. Rep., 182 (Cir. C., Cal.). Chinese laborers in the United States on Nov. 17, 1880, may return on satisfactory evidence of prior residence, even under the amendment of 1884 (112 U. S., 536). The certificate admits only the person described. (21 Fed. Rep., 785; 42 Fed. Rep., 398; 48 Fed. Rep., 668.)

Who may reenter.

*In re Shong Toon*, 21 Fed. Rep., 386 (Dist. C., Cal.). Chinese laborers who left the United States after May 6, 1882, and before July 5, 1884, can not reënter without certificate. (18 Fed. Rep., 527; 19 Fed. Rep., 490; 23 Fed. Rep., 441.)

A Chinese taken from a vessel on habeas corpus.

*In re Chin Ah Sooey*, 21 Fed. Rep., 393 (Dist. C., Cal.). A Chinese person taken from a vessel on habeas corpus, and found to be unlawfully within the United States after the vessel has sailed from which he was taken, may be ordered to be removed to the country whence he came. (21 Fed. Rep., 701.)

Tag not sufficient.

*In re Ah Kee*, 21 Fed. Rep., 701 (Cir. C., Cal.). A Chinese laborer who received from the custom-house officer a tag entitling him to a certificate, but not the certificate itself, can not return. (21 Fed. Rep., 789.) If the vessel has sailed in which he came, he can be removed to China, the expense to be charged to the owners of the steamer in which he came. (21 Fed. Rep., 393; 25 Fed. Rep., 97.)

Husband's certificate does not admit wife.

*In re Ah Moy*, 21 Fed. Rep., 785 (Cir. C., Cal.). The wife of a Chinese laborer is not entitled to enter the United States upon her husband's certificate. (21 Fed. Rep., 182; 42 Fed. Rep., 398; 48 Fed. Rep., 668.)

Tag.

*In re Kew Ock*, 21 Fed. Rep., 789 (Cir. C., Cal.). A Chinese laborer, who received a tag entitling him to a certificate, but limited in time, and who gave up the tag after its limit, but received no certificate, can not return. (21 Fed. Rep., 701.)

Certificate the only permissible evidence.

*In re Cheen Heong*, 21 Fed. Rep., 791 (Cir. C., Cal.). A Chinese laborer resided in the United States on Nov. 17, 1880, left for Honolulu in 1881, and returned in Sept., 1884, to the United States without a certificate. Held by Field, J., that he could not return and that the act of 1884 made the certificate the only permissible evidence. Sawyer, Cir. J., and two district judges who sat as consulting judges, dissented. (112 U. S., 536.)

Can not be admitted to bail.

*In re Ah Moy*, 21 Fed. Rep., 808 (Cir. C., Cal.). A Chinese person, after hearing on habeas corpus, who is remanded to the marshal to be deported, can not be admitted to bail, the vessel having departed. Opinion by Field, J. Sawyer, Cir. J., and two district judges who sat as consulting judges, dissented.

Chinese born in U. S. not excluded.

*In re Look Tin Sing*, 21 Fed. Rep., 905 (Cir. C., Cal.). A Chinese person born in the United States is a citizen of the United States and is not excluded by law. (35 Fed. Rep., 354; 36 Fed. Rep., 437, 553; 49 Fed. Rep., 146.)

Chinese sailors.

*In re Ah Kee*, 22 Fed. Rep., 519 (Dist. C., S. D., N. Y.). The exclusion acts do not apply to Chinese sailors, who land temporarily for the purpose of procuring a chance to ship in another vessel. (14 Fed. Rep., 44.)

Chinese merchants returning from temporary absence not excluded.

*In re Ah Ping*, 23 Fed. Rep., 329 (Cir. C., Cal.). § 6 of the acts of 1882 and 1884 does not apply to a Chinese merchant residing in the United States returning from a temporary absence, which began before the passage of the act of 1884. (141 U. S., 47.)

Excluded for want of certificate.

*In re Tang Ah Chee*, 23 Fed. Rep., 441 (Dist. C., Cal.). A Chinese laborer who left the United States after May 6, 1882, and took no certificate, is not entitled to reënter. (18 Fed. Rep., 527; 19 Fed. Rep., 490; 21 Fed. Rep., 386.)

Detention of Chinese person on a ship.

*In re Chow Goo Pooi*, 25 Fed. Rep., 77 (Cir. C., Cal.). A Chinese person detained on a ship is entitled to have his detention passed upon by a writ of habeas corpus. He

may be remanded to the ship if he has no right to land, but the ship can not be detained for the purpose. (21 Fed. Rep., 393, 701.) He is not entitled to a jury trial. If he has sailed, he may be remitted to the marshal to await the direction of the President. (21 Fed. Rep., 808.)

U. S. court not governed by the collector.

*In re Jung Ah Lung*, 25 Fed. Rep., 141 (Dist. C., Cal.). A United States court can issue a habeas corpus to inquire into the detention of Chinese on vessels by order of the court, and is not governed by the determination of the collector. (Affirmed, 124 U. S., 621.)

Conspiracies to drive Chinese out.

*In re Impaneling and instructing the grand jury*, 26 Fed. Rep., 749 (Dist. C., Oreg.). A conspiracy or an agreement to drive the Chinese out of the United States or to maltreat or intimidate them is indictable under R. S., § 5336. (27 Fed. Rep., 187.)

Conspiracy.

*In re Baldwin*, 27 Fed. Rep., 187. (Cir. C., Cal.) R. S., § 5519 can not constitutionally embrace a conspiracy to deprive Chinese residents in a State of the immunities secured by treaty. (26 Fed. Rep., 749.)

A Chinese child born in U. S. a citizen.

*Ex parte Chin King*, 35 Fed. Rep., 354 (Dist. C., Oreg.). A child born in the United States of Chinese parents is a citizen of the United States and not affected by the exclusion laws. (21 Fed. Rep., 905; 36 Fed. Rep., 437, 553; 49 Fed. Rep., 146.)

Decisions subsequent to 1888. Supreme Court. Act of 1888 is constitutional.

*The Chinese Exclusion Case, Chae Chan Ping* v. *United States*, 130 U. S., 581. The act of 1888, Oct. 1, excluding Chinese laborers, is constitutional. The certificates issued under the acts of 1882 and 1884 confer no rights which could not be repealed by subsequent acts of Congress. (Affirming 36 Fed. Rep., 431.)

Right of Chinese person to land.

*Wan Shing* v. *United States*, 140 U. S., 424. No Chinese laborer can land in the United States since the act of Oct. 1, 1888. The right of a Chinese person to land rests upon his establishing that he was not a laborer, and this must be by a certificate issued under § 6 of the act of 1882, May 6, as amended by the act of 1884, July 5.

Merchants temporarily absent allowed to land.

*In re Lau Ow Bew*, 141 U. S., 583; 144 U. S., 47. A Chinese merchant, resident for seventeen years in the United States, was refused permission to land, although his status as a merchant was established, because he had not obtained the certificate of the Chinese Government required by the acts of 1882 and 1884. On application to the Supreme Court, the circuit court of appeals was directed to certify the case to the Supreme Court as a case of special importance. Upon consideration of the case on its merits (144 U. S., 47), it was decided that the acts of 1882 and 1884 did not apply to the admission of Chinese merchants into the United States who temporarily left the country and seek to return to their homes.

Other Federal courts. Act of 1888 constitutional.

*In re Chae Chan Ping*, 36 Fed. Rep., 431 (Cir. C., N. D., Cal.). The act of Oct. 1, 1888, excluding Chinese laborers, is constitutional. The certificates issued under the acts of 1882 and 1884 are not contracts and their validity can be destroyed by subsequent acts. (Affirmed on appeal, 130 U. S., 581.)

A Chinese born in U. S. a citizen.

*In re Yung Sing Hee*, 36 Fed. Rep., 437 (Cir. C., Oreg.). A person born in the United States of Chinese parents is a citizen of the United States and not within the exclusion acts. (21 Fed. Rep., 905; 35 Fed. Rep., 354; 36 Fed. Rep., 553; 49 Fed. Rep., 146.)

Certain rights of travel.

*In re Tong Wah Sick*, 36 Fed. Rep., 440 (Cir. C., N. D., Cal.). Chinese subjects who purchase through tickets and embark at an American port on an American vessel for another American port and who do not leave the vessel, although it touches at a foreign port, have not departed from the United States. (13 Fed. Rep., 286, 291; 14 Fed. Rep., 44; 36 Fed. Rep., 441.)

Departure from U. S.

*In re Jack Sen*, 36 Fed. Rep., 441 (Cir. C., N. D., Cal.). A Chinese laborer who ships on an American vessel at an American port and does not land at any foreign port does not depart from the United States. (13 Fed. Rep., 286, 291; 14 Fed. Rep., 44; 36 Fed. Rep., 440.)

Is a citizen if born in U. S.

*In re Wy Shing*, 36 Fed. Rep., 553 (Cir. C., N. D., Cal.). A person born in the United States of Chinese parents is a citizen of the United States and is not excluded by the act of Oct. 1, 1888. (21 Fed. Rep., 905; 35 Fed. Rep., 354; 36 Fed. Rep., 437; 14 Fed. Rep., 146.)

Merchant entitled to bring wife on his certificate.

*In re Chung Toy Ho*, 42 Fed. Rep., 398 (Cir. C., Oreg.). A Chinese merchant entitled to come into the United States by reason of a certificate issued under § 6 of the act of 1884 can bring with him his wife and children. (21 Fed. Rep., 182, 785; 48 Fed. Rep., 668.)

Stolen vessels not forfeited by landing Chinese.

*United States* v. *The George E. Wilton*, 43 Fed. Rep., 606 (Dist. C., Wash.). A vessel bringing Chinese laborers into the United States in violation of law is not forfeited under the act of Oct. 1, 1888, and § 10 of the act of 1884 if the vessel had been stolen from its owner and used without his knowledge or consent.

Indictment.

*United States* v. *Trumbull*, 46 Fed. Rep., 755 (Dist. C., Wash.). In an indictment, under § 11 of the act of 1882 it is necessary to allege that the Chinese persons were unlawfully brought into the United States.

Meaning of "the country from whence he came."

*In re Leo Hem Bow*, 47 Fed. Rep., 302 (Dist. C., Wash.). The provision for the removal of a Chinese person unlawfully in the United States to "the country from whence he came" does not mean to China, if he came from some other country, and a Chinaman coming from British Columbia is to be returned there. (47 Fed. Rep., 305, 433, 878; 49 Fed. Rep., 569.)

Residence of Chinese person in British Columbia does not alter his status.

*United States* v. *Ah Toy*, 47 Fed. Rep., 305 (Dist. C., Wash.). A Chinese laborer who had lived in the United States and returned to China, but after Oct. 1, 1888, returned to the United States via British Columbia, having spent one year in that country as a sojourner, should be returned to China. (47 Fed. Rep., 302, 433, 878; 49 Fed. Rep., 569.)

Trial upon appeals.

*United States* v. *Jim*, 47 Fed. Rep., 431 (Dist. C., Wash.). Section 13 of the act of Sept. 13, 1888, is in force notwithstanding the provision of § 1 of the same act. The opinion holds that the whole act is in force except the "particular provisions of the first and fifteenth sections, which

are specially, by the provisions contained therein, made to depend for validity upon the contingency of the ratification, at a future time, of the pending treaty." (47 Fed. Rep., 433, 878; 48 Fed. Rep., 825; 50 Fed. Rep., 271; 55 Fed. Rep., 58.) A trial *de novo*, upon appeal from the commissioner, is permitted in a United States district court.

Chinese coming from Canada.

*In re Mah Wong Gee*, 47 Fed. Rep., 433 (Dist. C., Vt.). Section 13 of the act of Sept. 13, 1888, is in force, this being a part of the law not dependent upon the ratification of the treaty. (47 Fed. Rep., 431, 878; 48 Fed. Rep., 825; 50 Fed. Rep., 271; 55 Fed. Rep., 58.) A Chinese person coming from Canada to the United States unlawfully is to be deported to Canada under the act of 1888. (47 Fed. Rep., 302, 305, 878; 49 Fed. Rep., 569.)

Chinese merchant must have certificate.

*In re Lau Ow Bew*, 47 Fed. Rep., 578 (Cir. C., N. D., Cal.); 47 Fed. Rep., 641 (Cir. C. App., 9th Cir.). A Chinese merchant returning to this country after a temporary absence must have the certificate required by § 6 of the act of 1884. (Reversed by Supreme Court, 144 U. S., 47.)

Prior residence.

*In re Tom Mun*, 47 Fed. Rep., 722 (Dist. C., N. D., Cal.). Upon consideration of the evidence of prior residence the petitioner is not permitted to land, it having been shown that another person of the same name had been landed upon proper identification as the former resident and the proof of the present applicant being unsatisfactory. (112 U. S., 536.)

Chinese coming from Canada.

*United States* v. *Chong Sam*, 47 Fed. Rep., 878 (Dist. C., E. D., Mich.). Sections 1, 2, 4, and 15 of the act of Sept. 13, 1888, are not in force. Section 13 and other sections are in force. (47 Fed. Rep., 431, 433; 48 Fed. Rep., 825; 50 Fed. Rep., 271; 55 Fed. Rep., 58.) A Chinaman coming from Canada must be returned to Canada. (47 Fed. Rep., 302, 305, 433; 49 Fed. Rep., 569.)

Wives of actors.

*In re Wo Tai Li*, 48 Fed. Rep., 668 (Dist. C., N. D., Cal.). The wife of a Chinese actor is not entitled to entry without the certificate provided by § 6 of the act of 1884. (21 Fed. Rep., 182, 785; 42 Fed. Rep., 398.)

A Chinese merchant permitted to land by a collector.

*United States* v. *Lee Hoy*, 48 Fed. Rep., 825 (Dist. C., Wash.). A Chinese merchant, who was permitted to land by a collector, without the certificate required by § 6 of the act of 1884, after a visit to Canada, upon personal knowledge of his identity or private information, is lawfully in the United States, as the commissioner has a right to decide questions in controversy, subject to review by the Secretary of the Treasury. (50 Fed. Rep., 271.) An appeal was entertained from the judgment of the commissioner ordering his deportation. §§ 12 and 13 of the act of Sept. 13, 1888, are held to be in force. (47 Fed. Rep., 431, 433, 878; 50 Fed. Rep., 271; 55 Fed. Rep., 58. Affirmed by circuit court of appeals on different grounds, 50 Fed. Rep., 271.)

A person of Chinese parentage born in U. S. a citizen.

*Gee Fook Sing* v. *United States*, 49 Fed. Rep., 146 (Cir. C., App., 9th Cir.). A person of Chinese parentage, born in the United States, is a citizen of the United States and the right to entry can not be denied him. (21 Fed. Rep., 905; 35 Fed. Rep., 354; 36 Fed. Rep., 437, 553.) Upon

the facts in this case the proof of native birth is not satisfactory.

Findings of fact of a commissioner not reviewable upon habeas corpus.

*United States* v. *Don On*, 49 Fed. Rep., 569, (Cir. C., N. D., N. Y.). A Chinese laborer coming into this country from Canada is to be returned to Canada. (47 Fed. Rep., 302, 305, 433, 878.) The findings of fact of a commissioner are not to be reviewed upon habeas corpus. (47 Fed. Rep., 431; 54 Fed. Rep., 334.) The petitioner was subsequently discharged because the marshal was provided with no funds to pay the head tax charged by the Canadian Government.

Decision of collector.

*United States* v. *Gee Lee*, alias *Lee Hoy*, 50 Fed. Rep. 271 (Cir. C. App., 9th Cir., affirming 48 Fed. Rep., 825) Sec. 12 of the act of Sept. 13, 1888, making the decision of the collector final, subject to review by the Secretary of the Treasury, never went into effect. Sec. 13 of the same act is in force, because not within the purview of the limitation, upon the act going into effect, as defined by § 1. (47 Fed. Rep., 431, 433, 878; 48 Fed. Rep., 825; 55 Fed. Rep., 58.) An appeal lies from a judgment under this section to the circuit court of appeals. Sec. 6 of the act of July 5, 1884, does not apply to Chinese merchants domiciled in the United States and temporarily absent. (144 U. S., 47.)

Decisions subsequent to May 5, 1892.
Supreme Court.
Other Federal courts.

*In re Fong Yue Ting*, 149 U. S. 698. The act of May 5, 1892, is within the constitutional power of Congress to regulate or forbid the residence of aliens within the United States.

Imprisonment of Chinese unlawfully.

*United States* v. *Wong Sing*, 51 Fed. Rep., 79 (Dist. C., Wash.). The fourth section of the act of May 5, 1892, providing for the imprisonment of Chinnese persons unlawfully in the United States, does not render it necessary to proceed by indictment. (53 Fed. Rep., 233; 54 Fed. Rep., 334; 55 Fed. Rep., 58.)

Chinese merchants' rights.

*United States* v. *Chin Quong Look*, 52 Fed. Rep., 203 (Dist. C., Wash.). A Chinese merchant who resided and did business in the United States, and retained his interest in the firm, can not be excluded, although he returned to China and remained over six years. (144 U. S., 47.)

Act of May 5, 1892.

*United States* v. *Hing Quong Chow*, 53 Fed. Rep., 233 (Cir. C., E. D., La.). An indictment can not be brought against a Chinaman under the act of May 5, 1892, for being unlawfully in the United States. (51 Fed. Rep., 79; 54 Fed. Rep., 334; 55 Fed. Rep., 58.)

Summary proceedings.

*In re Sing Lee*, 54 Fed. Rep., 334 (Dist. C., W. D., Mich.). The provisions of the exclusion act of May 5, 1892, for summary proceedings are not a denial of due process of law or a violation of any common law rule of evidence or repugnant of the fourteenth amendment of the Constitution. The imprisonment provided is not a punishment, but a means of detention. (51 Fed. Rep., 79; 53 Fed. Rep., 233; 55 Fed. Rep., 58.) The findings of fact of the commissioner are not reviewable upon habeas corpus. (49 Fed. Rep., 431, 569.)

Certificate given by Chinese consul in Japan.

*United States* v. *Mock Chew*, 54 Fed. Rep., 490, (Cir. C. App., 9th Cir.). A certificate of identification under sec-

tion 6 of the act of July 5, 1884, given by a Chinese consul in Japan and certified by the United States vice-consul-general, is not sufficient without proof of the consul's authority from the Chinese Government.

*United States* v. *Long Hop*, 55 Fed. Rep., 58 (Dist. C., S. D., Ala.). The exclusion act of September 13, 1888, is all in force excepting sections 2–4 and 15. (47 Fed. Rep., 431, 433, 878; 48 Fed. Rep., 825; 50 Fed. Rep., 271.) Due process of law requires that the United States shall show the unlawful residence. (51 Fed. Rep., 79; 53 Fed. Rep., 233; 54 Fed. Rep., 58.)

Act of 1888 in force, except sections 2–4 and 15.

**Citizenship of, commanders of vessels of the United States.**—The officers of vessels of the United States shall in all cases be citizens of the United States.

Rev. Stat., s. 1443; act June 28, 1864, ch. 170, s. 1, vol. 13, p. 201.

(*a*) *Certain Confederates not precluded.*—It is the opinion of the Attorney-General that this statute does not preclude citizens of the United States who resigned commissions in the Navy of the United States and entered the Confederate service.

(*a*) 11 A.G.Op., 317.

**Civilian lawyer, not to act as judge-advocate.**—Under the statute cited the Secretary of the Navy can not retain a civilian lawyer to act as judge-advocate of a court-martial, but must call upon the Department of Justice for an officer for the service.

Rev. Stat., s. 189; 13 A.G.Op., 514; 14 id., 13; 7 id., 141; 10 id., 40.

(*a*) *Employment of agents.*—Heads of Departments may employ agents when necessary.

(*a*) Gratiot v. U. S., 15 Peters, 336; U. S. v. Macdaniel, 7 id., 1. See notes on U. S. Statutes (Gould and Tucker), p. 21.

**Civilian witnesses, court-martial.**—A naval court-martial, or judge-advocate thereof, has no power to compel a civilian who is not subject to the articles for the government of the Navy to appear and testify before such court.

Rev. Stat., s. 1624; articles of the Navy, 42, 57; 19 A. G. Op., 501, Miller, Feb. 26, 1890.

(*a*) Neither article 42 nor article 57 in the section first cited gives the power to compel the attendance of civilian witnesses.

(*a*) Articles for the Government of the Navy, 42 and 57.

(*b*) The provisions of the section here cited apply to the military (i. e., army) courts only.

(*b*) Rev. Stat., s. 1202.

**Claim of participant in the rebellion.**—In 1860 E., a naval officer, became entitled to a share in the proceeds of a captured slaver, the amount of which was certified to the Treasury Department by the Secretary of the Navy, but remains unpaid. In 1861 E. resigned his commission and entered the Confederate service: *Held*, that by force of the statutes cited payment of such share can not now be made, notwithstanding the President's proclamation of amnesty of December 25, 1868, and that to authorize its payment an act of Congress is necessary.

Rev. Stat., s. 3480; joint res., Mar. 2, 1867; 18 A. G. Op., 421, Garland, June 17, 1886.

**Clerks employed, report of.**—The act cited made the requirement contained in the section of reporting the names of all employees annually of the Secretary of the Navy.

Rev. Stat., s. 194; act Aug. 26, 1842.

**Clerks to admirals, etc.**—The later act cited provides that on and after July first, eighteen hundred and seventy-eight, there shall be no appointments made from civil life of secretaries or clerks to the Admiral or Vice-Admiral,

20 Stat. L., 50; act May 4, 1878, ch. 91, amending Rev. Stat., s. 1556.

when on sea service, commanders of squadrons, or of clerks to commanders of vessels; and an officer not above the grade of lieutenant shall be detailed to perform the duties of secretary to the Admiral or Vice-Admiral when on sea service, and one not above the grade of master to perform the duty of clerk to a rear-admiral or commander, and not one above the grade of ensign to perform the duties of clerk to a captain, commander, or lieutenant-commander when afloat: *Provided*, That the secretaries and clerks in service on July first, eighteen hundred and seventy-eight, on vessels abroad, shall continue as such until such vessel shall return to the United States on the termination of its cruise.

Rev. Stat., ss. 1229, 1230; 13 A. G. Op., 44.

**Commissioning, displacing, and dismissing officers by the President.**—One is not an officer in the Army or Navy until the commission appointing him such has been signed by the President, although his nomination has been confirmed by the Senate.

(a) Keyes v. U. S., 109 U. S., 336; McElrath v. U. S., 102 id., 426; Blake v. U. S., 103 id., 227, 236.

(a) *Power to displace an officer.*—The President has power to displace an officer, with the advice and consent of the Senate, by appointing another in his place.

(b) 12 A. G. Op., 14; McElrath v. U. S., 102 U. S., 426; 12 C. Cls. R., 201.

(b) *President's power to dismiss.*—This statute was held by the Attorney-General (XII Opins. 4) not to be unconstitutional, in that it was not "obnoxious to the objection that it invades or frustrates the power of the President to dismiss an officer." More serious objections to its constitutionality are believed to be: 1, that it authorizes the subjecting to military trial of a civilian; 2, that in restoring an officer to the Army it substitutes the action of a court-martial for the appointing power of the President.

(c) 16 A. G. Op., 298; Kilburn v. U. S., 15 C. Cls. R., 41.

(c) *Filling vacancy confirms sentence of dismissal.*—If an officer is sentenced to dismissal and the President fills the vacancy by appointment or nomination, this operates as a confirmation of the sentence.

(d) Corson v. U. S., 114 U. S., 619; 17 C. Cls. R., 344; Menimack v. U. S., 97 U. S., 426; 10 C. Cls. R., 584; 4 A. G. Op., 8, 318; Montgomery's Case, 19 C. Cls. R., 370; 5 id., 93; Miller's Case, 19 id., 338; McBlair's Case, id., 389; Bennett's Case, id., 379; Burchard's Case, id., 137; 4 A. G. Op., 274.

(d) *Revoking order of dismissal.*—The President can not revoke an order dismissing an officer * * * so as to enable him to regain his position and become entitled to its emoluments.

(e) Gratiot v. U. S., 1 C. Cls. R., 258; Newton v. U. S., 18 id., 435.

(e) *Discretionary power of President to dismiss.*—The President's power to dismiss an * * * officer, being discretionary, can not be reviewed in the Court of Claims, at least after a long lapse of time.

(f) Newton v. U. S., 18 C. Cls. R., 435.

(f) *Application for court-martial.*—Such officer's application for court-martial must be made within a reasonable time.

Rev. Stat., s. 3718; 6 A. G. Op., 40, 99; 20 Stat. L., 253.

**Contracts, boilers, material for.**—Material for steamboat boilers for the Navy may be purchased at the lowest market price without advertisement, provided that specifications are sent to the principal dealers and manufacturers and the inspection and tests are public.

(a) 10 A. G. Op., 140.

(a) *Lowest bid.*—The lowest bid may be accepted, if it substantially complies with the law, notwithstanding it designates a different time for completing the contract than the advertisement fixed.

(*b*) "*When time will permit.*"—The words quoted apply only to such supplies as the wants of the service make it necessary to purchase for immediate use when there is no time to abide the delay of advertising. They do not apply to contracts to run through three years when there is on hand a sufficient quantity of the article for the present wants of the service. (*b*) 4 A. G. Op., 475.

(*c*) *Terms of contract must be followed.*—Contract for construction of battleship *Indiana* construed, and *held* that it was not competent for the Secretary of the Navy, under the existing contract, to pay to the contractors any part of the last three installments of the price of the vessel or of reservations from previous payments prior to the preliminary or conditional acceptance of the vessel; but that a supplemental contract might be entered into, modifying the terms and provisions of the existing contract. (*c*) 21 A. G. Op., 13, Olney, Apr. 27, 1894.

(*d*) *To furnish provisions.*—Contracts made by the United States, through the Secretary of the Navy, to furnish provisions for the naval service can not be rescinded by the chief of the bureau having charge of such contracts and supplies without the sanction of the head of the Department. (*d*) Rev. Stat., s. 421; U. S. *v.* Shaw, 1 Cliff., 317.

(*e*) *Must come within the terms of law.*—A person who enters into a contract with an officer of the Government must look to the statute under which it is made and see that his contract comes within the terms of the law. (*e*) Rev. Stat., s. 3732; Collins's Case, 15 C. Cls. R., 35; 15 A. G. Op., 124, 210, 239, 257; Floyd acceptances, 7 Wall., 666, 680.

(*f*) *Conditioned on further appropriations.*—A contract made by a Navy agent for piles to be used in a dry dock, to be delivered after Congress should make further appropriations, is not valid. (*f*) 4 A. G. Op., 490.

(*g*) *Head of Department may bind the Government.*—Under the section cited the head of a Department may bind the Government only in two cases (1) where the contract is expressly authorized by law, (2) where there is an appropriation already made large enough to fulfill it. In the first case, there is an express power to contract for the work; and, in the second case, there is an implied power to contract for so much work as the appropriation will pay for. (*g*) 9 A. G. Op., 18.

(*h*) *Exception to the rule.*—The two sections cited under (*h*) should be construed together. Under the section 3732 the heads of the War and Navy Departments, in the absence of appropriations, are authorized to purchase or contract for clothing, subsistence, forage, fuel, quarters, or transportation, not exceeding the necessities of the current year. The section 3679 does not prohibit such contracts. The exception in section 3732 in favor of contracts or purchases in the War and Navy Departments for clothing, subsistence, etc., withdraws such contracts or purchases from the prohibition of section 3679, and they may be made, though there is no appropriation adequate to their fulfillment, if the necessities of the current year are not exceeded. (*h*) Rev. Stat., ss. 3679, 3732. 15 A. G. Op, 209. 15 A. G. Op., 124.

(*i*) *Specific appropriations.*—If money has been appropriated for a specific object, the head of the Department (*i*) 4 A. G. Op., 600.

charged with the expenditure of it may use so much as may be necessary with a view to the subsequent completion of the work if Congress shall provide therefor; but he can not bind the Government to pay any sum in excess of that appropriated.

(j) Leavitt v. U. S., 34 F. R., 623.

(j) *Exception.*—Where an appropriation has been made for a certain purpose, and a consul in a distant country is instructed by the Department of State to make purchases thereunder, such purchases are legal though it turns out a year and a half afterwards, when the consul's bill is presented, that the appropriation is exhausted.

(k) Shipman v. U. S., 18 C. Cls. R., 138.

(k) *Absolute authority to act.*—Where the authority to contract for a work in behalf of the United States depends wholly upon an appropriation made for the purpose, no officer thereof can create a liability therefor beyond the sum appropriated, and a contractor can not receive more than was appropriated, no matter what the extent of the work; but when an act authorizes a thing to be done absolutely, and makes an insufficient appropriation or none at all, it is different.

(l) 15 A. G. Op., 235.

(l) "*Authorized by law.*"—A contract to have been authorized by law must appear to have been made either in pursuance of express authority given by statute or of authority necessarily inferrable from some duty imposed upon or from some power to the person assuming to contract on behalf of the Government.

(m) Rev. Stat., s. 3744; Clark v. U. S., 95 U. S., 539; Solomon v. U. S., 19 Wall., 17; South Boston Iron Co. v. U. S., 118 U., S. 42; 18 Cl. Cls. R., 165; Lindsay's Case, 4 C. Cls. R., 359; Jones's Case, 11 C. Cls. R., 733; Steele v. U. S., 19 C. Cls. R., 181.

(m) *Must be reduced to writing.*—Contracts to bind the United States must be actually reduced to writing and signed by the contracting parties, the signing of the preliminary memoranda being insufficient.

(n) Burchiel's Case, 4 C. Cls. R., 549.

(n) *Recovery in Court of Claims.*—The contract is only made void as an executory one, and if the goods have been actually received and used by the Government their value may be recovered in the Court of Claims.

(o) Cobb v. U. S., 18 C. Cls. R., 514, citing Clark v. U. S., 95 U. S. 539, and overseeing Cobb & Co.'s Case, 7 C. Cls. R., 470.

(o) *Contracts made in an emergency.*—The provision requiring contracts made by the Departments named (War and Navy) in the section cited to be in writing and signed applies to such as are made in an emergency without advertising for proposals.

(p) Danold's Case, 5 C. Cls. R., 65; Henderson's Case, 4 C. Cls. R., 75.

(p) *Extends to purchasing agents and officers.*—The statute cited extends not merely to purchasing agents, but to all officers in the War, Navy, and Interior Departments, including the secretaries themselves.

(q) Op. of Attorney-General, August 19, 1892.

(q) *Advertisement for proposals and acceptance of proposal by the Navy Department not a contract.*—An advertisement for proposals, a proposal from a bidder and its acceptance by the Navy Department do not constitute a contract. The common law rule respecting an offering and its acceptance being modified by section 3744 of the Revised Statutes, which requires that all contracts entered into by the Departments therein named shall be reduced to writing and signed by the contracting parties.

The Supreme Court has held (Clark *v.* U. S., 95 U. S., 542, and S. B. Iron Co. *v.* U. S., 118 U. S., 38), that contracts contemplated by that section do not become valid until executed in accordance with its requirements.

**Construction of vessels**, rights and duties of the United States arising under contracts for. — 18 A. G. Op., p. 207, Garland, June 30, 1885; Also see p.—same case, 240, reaffirmed.

(*a*) *Authority to build without provision for plans.*—Where a statute authorizes the building of vessels by the Navy Department, but makes no provision for procuring the necessary plans and specifications therefor, it is to be construed as impliedly authorizing the head of the Department to procure such plans and specifications in the mode and manner which he shall deem best. — Ibid., p. 244.

**Cooperation of revenue cutters with the Navy.**—The revenue cutters employed in carrying out the order issued by President Lincoln to the Secretary of the Treasury, dated June 14, 1863, were, while so employed, cooperating with the Navy by order of the President; and if any of the officers or seamen thereof, during such employment, were wounded or disabled in the discharge of their duty, they became entitled to be placed on the Navy pension list at the same rate of pension and under the same regulations and restrictions as are provided by law for the officers and seamen of the Navy. — Rev. Stat., ss., 2757, 4741; 19 A. G. Op., 505.

**Costs of suits.**—The words "costs of suits" in the appropriation act cited relate to the ordinary taxed costs of suits and not to fees of counsel. Accordingly the fee of the United States attorney for services in defending suits brought against certain naval officers for acts done by them in obedience to the orders of the Navy Department can not be paid out of that appropriation, but must be fixed by the Attorney-General and paid out of the appropriations for the payment of such special compensation as may be fixed by the Attorney-General for services not covered by salaries or fees. — Act June 30, 1890, ch. 640; 20 A. G. Op., 49, Miller, Mar. 26, 1891.

**Courts-martial.**—Courts-martial are lawful tribunals with like jurisdiction as civil courts in cases within their cognizance; their proceedings, though erroneous, can not be reviewed collaterally by habeas corpus, those in the Army and Navy having surrendered their right of trial by the civil courts. — Art. 14, Rules and Regulations; Re Davidson, 22 Blatch., 473; 21 F. R., 618; Re White, 17 id., 723; Re McNey, 11 Sawyer, 25; 23 F. R., 878; Ex parte Millegan, 4 Wall., 123; Ex parte Kearney, 7 Wheat., 38; Ex parte Reed, 100 U. S., 13; Ex parte Watkins, 3 Pet., 393; State *v.* Stillman, 7 Cold. (Tenn.), 341; Tennessee *v.* Hibdom, 23 F.R., 795; 20 Rep., 38; 11 A. G. Op., 297; Gould and Tucker, notes on U. S. Stats., s. 751.

(*a*) *Writ of prohibition does not lie to, etc.*—A writ of prohibition does not lie to a court-martial to correct mistakes of law or fact within its jurisdiction. — (*a*) Smith *v.* Whitney, 116 U. S., 167.

(b) Id.; State v. Wakely, 2 Nott & M. (S. C.), 410.

(b) *Writ of prohibition does not lie to an executive officer.*—Such writ does not lie to an executive officer like the Secretary of the Navy, not being a member of the court, but merely convening it.

(c) Dynes v. Hoover, 20 How., 65; Barrett v. Hopkins, 7 F. R., 312; 2 McCrary, 129; 12 A. G. Op., 128; Re Egan, 5 Blatch., 319.

(c) *Jurisdiction of, may be inquired into.*—The jurisdiction of a court-martial may always be inquired into on habeas corpus.

(d) 6 A. G. Op., 413; id., 506.

(d) *Soldier or officer offending criminally under civil law.*—If a soldier or officer does an act criminal under the civil law and military law, he is to be tried by the former in preference to the latter, under conditions and limitations stated. A discharge or conviction in the civil courts does not relieve him from responsibility to the military tribunals for the same offense.

(e) Holmes v. Sheridan, 1 Dillon, 531; Hill v. U. S., 9 C. Cls. R., 178.

(e) *Army contractors subject to.*—Army contractors are subject to the rules of the section cited.

(f) Babbitt v. U. S., 16 C. Cls. R., 202; 7 A. G. Op., 323; 1 id., 276.

(f) *Post traders subject to.*—Post traders and sutlers are subject to the rules of the section cited.

(g) Authorities same as under *f*.

(g) *Cadets subject.*—Naval cadets are subject to the rules of the section cited.

(h) 16 A. G. Op. 13, 48.

(h) *Civilian employee as quartermaster's clerk.*—A civilian employed as a quartermaster's clerk is not subject to the jurisdiction of a court-martial.

(i) Id.

(i) *Superintendents of national cemeteries.*—Superintendents of national cemeteries are not subject to the jurisdiction of a court-martial.

(j) 1 Com. D., 639.

(j) *Statutes providing for trial by court-martial.*—The revisers have placed certain enactments as Articles of War, which had not previously borne that name, regarding a statute providing for trial of an offense by court-martial as amounting to an article of war so providing.

(k) Rev. Stat., s. 366; 18 A. G. Op., 135, Garland, Mar. 21, 1885.

(k) *Special counsel.*—Special counsel may be employed by the Attorney-General, at the request of the Secretary of the Navy, to assist the judge-advocate in the trial by court-martial, the compensation of such counsel (in the absence of other provisions) to be paid from the appropriation for the contingent expenses of the Navy. Such counsel should be commissioned by the Attorney-General under the section cited.

Rev. Stat., s. 366; 21 A. G. Op., 195, Harmon, July 17, 1895; Rev. Stat., ss. 189, 357, 365; act June 22, 1870; 16 Stat. L., 162, s. 17; 13 Op., 583; 19 Op., 328; U. S. v. San Jacinto Tin Company, 125 U. S., 273, 279, 280; In re Neagle, 135 U. S., 65, 67.

**Counsel, employment of, for the United States.**—In view of the provisions of the statute cited the Secretary of the Navy is not authorized to employ counsel in foreign countries to institute suit in behalf of the United States to recover for damages caused to a war vessel of the United States, but the case should be referred to the Department of Justice for attention.

Act Aug. 5, 1882; act Mar. 3, 1883; 17 A. G. Op., 555; case of Boatswain McDonald.

**Credited with actual time of service.**—The opinion of Attorney-General Brewster, delivered June 22, 1883, says that "the provisions of the Navy appropriation acts, cited, requiring all officers of the Navy to be credited

with the actual time they have served as officers or enlisted men in the Regular or Volunteer Navy, etc., do not entitle such officers to any increased pay for services rendered by them prior to March 3, 1883."

**Cruisers, construction of.**—The Secretary of the Navy may assent to a modification of the contract for building the new cruisers where the interests of the Government will not be prejudiced or any statutory provision violated thereby. 18 A.G.Op., 101, Brewster, Jan. 20, 1885.

(*a*) *Payments for.*—The statute cited does not preclude a payment in any case where the money has been actually earned and the Government has received an equivalent therefor; its object is to prevent payment being made to contractors in advance of the performance of their contracts, whether for services or supplies. (*a*) Rev. Stat., s. 3648; 18 A. G. Op., 105, Brewster, Jan. 22, 1885.

(*b*) *Steel cruisers*, construction of, authorized. (*b*) 25 Stat. L., 472; 24 Stat. L., 7, 151, 154; 23 Stat. L., 262, 292, 433; 22 Stat. L., 291, 477.

**Death of resident on naval reservation.**—Where a resident on the naval reservation at Pensacola, Fla., died intestate possessed of certain property which is in the hands of the commandant of the yard: *Advised*, that the local probate court of the State may properly exercise jurisdiction over the case, and that on the appointment thereby of an administrator of the estate of the deceased the property in the hands of the commandant belonging to such estate should be turned over to the administrator. 19 A. G. Op., 176, G. A. Jenks, Act. A. G., Aug. 4, 1888.

**Deficient naval cadets.**—Where certain naval cadets were found deficient at the semiannual examination held at the Naval Academy in January, 1889, and without the recommendation of the Academic Board were granted leaves of absence by the Secretary of the Navy with permission to report to the Superintendent of the Academy to join the next fourth class: *Held*, that the Secretary had no power to continue these cadets in the Academy without the recommendation of the Academic Board. Rev. Stat., ss. 1519, 1525; 22 Stat. L., 285; act Mar. 2, 1889; 15 A. G. Op., 636, 637; 19 A. G. Op., 302, Miller, May 2, 1889.

**Department, Navy.**—Employees and salaries. 23 Stat. L., 183, 413; 18 Stat. L., 11, ch. 4.

**Departmental clerks, delegation of power.** — Departmental clerks, messengers, and laborers are to be appointed and removed by the head of the Department when not otherwise provided by statute. This power can not be delegated, but must be exercised by the Secretary or Acting Secretary. Act Feb. 9, 1889, ch. 122, s. 1; Rev. Stat., s. 169, also 60 and 194 and 476; 21 A. G. Op., 355, gives full references. Harmon, May 26, 1896.

**Desertion**, enticing seamen to commit, what constitutes the offense, and punishment therefor. Rev. Stat., s. 1553; U. S. *v.* Thompson, 2 Sprague, 165.

**Detail for duty, Marine Corps.**—The Secretary of the Navy has authority to detail men to guard and protect property of the Government placed on exhibition at the World's Columbian Exposition. The cost of transportation and sustenance of such detail must be paid from the fund provided for the Marine Corps and its subsistence, and is only limited by the consideration of the question whether 26 Stat. L., 62; Rev. Stat., s. 1621; act Mar. 3, 1893; 20 A. G. Op., 576, Olney, Apr. 19, 1893.

there are sufficient funds available for that purpose, as to which the Secretary of the Navy is the sole judge.

(a) 20 A. G. Op., 577, Olney, April 25, 1893.

(a) *Subsistence of enlisted men.*—The Navy Department is authorized to pay for the actual subsistence of the enlisted men of the Navy employed in taking care of and preserving the stores and other Government property placed on exhibition at the World's Columbian Exposition under the supervision of the Navy Department in pursuance of law. The expenses necessarily accruing out of the transportation and subsistence of the marines detailed for that purpose may be paid from the fund provided for the Marine Corps and its subsistence.

Act Aug. 5, 1882, ch. 389, s. 4; Nathan Plummer v. U. S., 24 C. Cls. R., 517; Rev. Stat., s. 166; 27 Stat. L., 682, ch. 211; 20 A. G. Op., 250, Olney, Mar. 21, 1894.

**Detail of clerks.**—It is competent for a head of a Department to alter the disposition among the various bureaus and officers of the Department of the clerks allowed by law as he may find it necessary and proper to do, taking care that in no case shall any such clerk be paid from any appropriation made for contingent expenses or for any specific or general purpose, unless such payment is specifically provided for in the law granting the appropriation.

But by act of May 28, 1896 (29 Stats. L., 140, sec. 3) all details must be made by written order of the head of the Department, and must not exceed one hundred and twenty days; but may be renewed from time to time.

Rev. Stat., s. 1413, 1465.

**Detail of officers on retired list.**—In time of war the President, by and with the advice and consent of the Senate, may detail officers on the retired list for the command of squadrons and single ships, when he believes that the good of the service requires that they shall be so placed in command.

(a) 1 Com. D., 704.

(a) *Revisers' views.*—The revisers regarded these provisions as referring to the late war and as not adapted to the conditions of the service at the time of the revision.

Rev. Stat., s. 1422; 18 Stat. L., 484.

**Discharge, manner of.**—The statute of March 3, 1875, chapter 155, inserts "or Pacific" after "Atlantic" in second and last lines; inserts, after "States," in third line, "as their enlistment may have occurred on either the Atlantic or Pacific Coast of the United States;" substitutes "enlistment" for "service" in fifth line; strikes out "very" in the sixth line, and adds at end of the section:

All persons enlisted within the limits of the United States may be discharged, on the expiration of their enlistment, either in foreign port or in a port of the United States, or they may be detained as above provided beyond the term of their enlistment; and that all persons sent home, or detained by a commanding officer, according to the provisions of this act, shall be subject in all respects to the laws and regulations of the government of the Navy until their return to an Atlantic or Pacific port and their regular discharge; and all persons so detained by such officer, or reentering to serve until the return to an Atlantic or Pacific port of the vessel to which they belong, shall in no case be held in service more than thirty days after their arrival in said port;

and that all persons who shall be so detained beyond their terms of enlistment, or who shall, after the termination of their enlistment, voluntarily reenter to serve until the return to an Atlantic or Pacific port of the vessel to which they belong, and their regular discharge therefrom, shall receive for the time during which they are so detained, or shall so serve, beyond their original terms of enlistment, an addition of one-fourth of their former pay: *Provided*, That the shipping articles shall hereafter contain the substance of this section.

**Dropping an officer from the rolls.**—The sections cited change and make certain the previous laws as to the effect of dropping an officer from the rolls.

Rev. Stat., ss. 1229, 1230; act July 15, 1870, ch. 294, s. 17; 15 Stat. L., 319; act 1865, ch. 79, s. 12, 13 Stat. L., 489; act July 20, 1868, ch. 185; Stat. L., 125; 1 Com. D., 611.

(*a*) "*Any officer dismissed.*"—This phrase in section 1230, cited, is prospective only.

(*a*) 16 A.G. Op., 599; Steiner's Case, 8 A. G. Op., 328.

**Eight hours to be a day's work.**—"Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the Government of the United States."

Rev. Stat., s. 3738.

(*a*) *In the nature of a direction.*—This is in the nature of a direction by the Government to its agents; it is not a contract between the Government and its laborers, and does not preclude it from making contracts fixing a different length of time as a day's work.

(*a*) U.S. v. Martin, 94 U. S., 400; 10 Ct. Cls. R., 276; 16 A. G. Op., 58; 13 A. G. Op., 29; 12 A. G. Op., 520.

(*b*) *Does not apply in certain cases.*—The section, 3738, cited, does not apply to mechanics, workmen, and laborers who are employed by one who has a contract with the Government.

(*b*) 14 A.G.Op., 37, 45.

(*c*) *Hours of labor in private navy-yards.*—The section cited repeals so much of the act of 1862, cited, as required that the hours of labor in navy-yards should conform to those of private establishments, but not that part of it which required that the rate of wages should conform to the rate paid at such establishments.

(*c*) 12 Stat. L., 587; Averill v. U. S., 14 Ct. Cls. R., 200.

(*d*) *No recourse if pay is accepted for twelve hours as a day's work.*—Independently of the section cited, if an employee in the public service works twelve hours per day, is paid and accepts the payment, he can not be heard to allege that every eight hours constituted a day's work under the section.

(*d*) Driscoll v. U. S., 13 Ct. Cls. R., 15.

*Persons in employ of contractors, etc.*—The act of August 1, 1892, chapter 352, is of general application and the limitation as to public works in said act applies only to such persons as are in the employ of contractors or subcontractors.

Act of Aug. 1, 1892.

*Laborers or mechanics.*—The act is directly applicable to laborers or mechanics working for the Government for wages under ordinary conditions; "at the same time, it is quite apparent that, as to some of them, it might frequently happen that they would be within the emergency exception named in the statute; and as to others, as, for instance, sailors or others on shipboard, or teamsters,

Op., 463, Miller to the Secretary of War, Aug. 27, 1892.

their employment being peculiar, they might well be held to be, as a matter of fact, neither laborers nor mechanics within the meaning of this law.

20 Op., 454. *Eight hour law, application of.*—The eight-hour law does not apply to a contract for furnishing materials such as post-office locks to be used in a Government building.

Op. of Attorney-General, Aug. 19, 1892. *Timber dry dock, or public work.*—A timber dry dock "intended to be a valuable and permanent improvement of real estate belonging to the United States and solely for its use and benefit is to be regarded as one of the "public works of the United States under the eight-hour law.

Rev. Stat., s. 1517; 10 A.G.Op., 315, 320. **Eligibility to cadetship** in the Naval Academy in respect of age.

Rev. Stat., s. 1390; 16 A.G.Op., 417, 419; Rev. Stat., s. 1475; act Feb. 24, 1874, ch. 35; 18 Stat. L., 7. **Engineers.**—The statute changes the title of first assistant engineer to passed assistant engineer, and that of second assistant engineer to assistant engineer, provided that the regulations relating to examinations and amount of sea service previous to each examination be complied with.

(a) 20 Stat. L., 322; act Feb. 26, 1879, ch. 105. (a) *Twenty-five such engineers may be detailed for such scientific schools.*—The President is authorized by statute, upon the application of an established scientific school or college within the United States, to detail an officer of this corps as professor in such school or college, the number detailed not to exceed twenty-five at any time; and such details, which are to be governed by rules prescribed by the President, may be withheld or withdrawn whenever, in the judgment of the President, the public service so requires.

(b) Rev. Stat., s. 1394; Slawson's Case, 4 C. Cls. R., 87. (b) *Chartering steamers.*—A naval engineer derives no authority from his office alone to charter a steamer for the use of the Quartermaster's Department.

(c) Rev. Stat., s. 1476; 23 Stat. L., 340, ch. 318. See note to s. 1390. (c) *President to appoint chief engineer.*—Statutes cited authorize the President to nominate and, by and with the advice and consent of the Senate, to appoint one passed assistant engineer, now on the retired list of the Navy, a chief engineer on the retired list of the Navy, with the highest retired pay of that grade.

(d) Rev. Stat., ss. 1484, 1486; 15 A. G. Op., 336; 21 Stat. L., 510. (d) *Nongraduates.*—The first section cited (1484) operates as an exception to the latter section cited (1486) by excluding therefrom engineer officers graduated at the Naval Academy. Engineer officers not so graduated stand on the same footing with other staff officers, and are entitled to the six years' constructive service.

The act cited (21 Stat. L., p. 510, ch. 150) adds at the end of the section (1486) the following provision: "That nothing in this section shall be so construed as to give to any officer of the staff corps precedence of, or a higher relative rank than that of, another staff officer in the same grade and corps, and whose commission in such grade and corps antedates that of such officer."

(e) Act July 9, 1888, ch. 591; 25 Stat. L., 241. (e) *Cadet engineers.*—The section cited provides: "That for the purpose of placing certain cadet engineers (gradu-

ates) in their proper grade and rank in the Navy, the President of the United States be, and is hereby, authorized to appoint, and, by and with the advice and consent of the Senate, commission as assistant engineers in the Navy the cadet engineers of the classes of 1881 and 1882 now in the Navy: *Provided*, That the commissions of the class of 1881 be dated from July 1, 1883, and their names be placed on the Navy Register immediately after the name of William D. Weaver, and that they take precedence in their grade and corps according to their proficiency as shown by their order of merit at the date of graduation; and that the commissions of the class of 1882 be dated from July 1, 1884, and their names be placed on the Navy Register immediately after the name of Charles E. Rommell, and that they take precedence in their grade and corps according to their proficiency as shown by their order of merit at the date of graduation: *Provided*, That any of such cadet engineers who failed to pass the physical examination at the Naval Academy made at the time of their graduation shall be subjected to further examinations before receiving their appointments, as above authorized."

(*f*) *Appointed annually.*—The statute of June 22, 1874, chapter 392, repeals so much of the provision in section 1523 as provides that cadet engineers, not to exceed fifty in number, shall be appointed by the Secretary of the Navy, and provides, repealing inconsistent acts, that cadet engineers shall hereafter be appointed annually by the Secretary of the Navy, and the number appointed each year shall not exceed twenty-five.

(*f*) Rev. Stat., s. 1523, in part repealed by act June 22, 1874, ch. 392; 18 Stat. L., 191.

(*g*) By statute of February 24, 1874, chapter 35, section 2, the course of instruction at the Naval Academy for cadet engineers shall be for four years, instead of two as now provided by law.

(*g*) Rev. Stat., s. 1524; 18 Stat. L., 17.

**Engineer Corps.**—The active list of the Engineer Corps of the Navy shall hereafter consist of ten chief engineers with the relative rank of captain, fifteen chief engineers with the relative rank of commander, forty-five chief engineers with the relative rank of lieutenant-commander or lieutenant, sixty passed assistant engineers and forty assistant engineers with the relative rank for each as now fixed by law; and after the number of officers in the said grades shall be reduced as above provided, the number in each grade shall not exceed the reduced number which is fixed by the provisions of this act for the several grades.

22 Stat. L., 285; act Aug. 5, 1882.

*Not to be reduced in rank.*—No officer now in the service shall be reduced in rank or deprived of his commission by reason of any provision of the act of August 5, 1882, cited, reducing the number of officers in the several staff corps: *Provided*, That no further appointments of cadet engineers shall be made by the Secretary of the Navy under section three of the act of 1874 [by which such appointments shall not exceed twenty-five each year].

See "Active List," p. —.

Rev. Stat., s. 1417; 21 Stat. L., 3, ch. 5, repeals in part ch. 159, 19 Stat. L., 65. The new section adds the words after "coal heavers."

**Enlisted men, number of.**—The number of persons who may at one time be enlisted into the Navy of the United States, including seamen, ordinary seamen, landsmen, mechanics, firemen, coal heavers, and including seven hundred and fifty apprentices and boys, hereby authorized to be enlisted annually, shall not exceed eight thousand two hundred and fifty: *Provided*, That in the appointment of warrant officers in the naval service of the United States preference shall be given to men who have been honorably discharged upon the expiration of an enlistment as an apprentice or boy, to serve during minority, and reenlisted within three months after such discharge, to serve during a term of three or more years: *Provided further*, That nothing in this act shall be held to abrogate the provisions of section fourteen hundred and seven.

(a) Rev. Stat., s. 1426.

(a) *Honorable discharges may be granted.*—Honorable discharges may be granted to seamen, ordinary seamen, landsmen, firemen, coal heavers, and boys who have enlisted for three years.

(b) Act of Mar. 2, 1855, ch. 136, s. 11; 10 Stat. L., 628; U. S. v. Thompson, 2 Sprague, 165.

(b) *Enticing seamen to desert.*

(c) 23 Stat. L., 291.

(c) *Entitled to a ration, etc.*—Enlisted men attached to any United States vessel or station on duty shall be entitled to a ration or commutation thereof.

(d) Rev. Stat., s. 1553; act Mar. 2, 1855, ch. 136, s. 11; U. S. v. Thompson, 2 Sprague, 103.

(d) *What constitutes enlistment.*—Under the act of 1855, chapter 136, section 11, a seaman who had passed his examination at the naval rendezvous, but had not been examined and passed on the receiving ship, was held not to be enlisted.

25 Stat. L., 657; 19 A. G. Op., 616, Miller, July 31, 1890.

**Enlisted men of the Marine Corps.**—The act of February 9, 1889, cited, to provide for the deposit of the savings of seamen of the United States Navy, does not extend to enlisted men of the Marine Corps.

(a) Act of June 16, 1890; Rev. Stat., s. 1612.

(a) *Prevent desertions, etc.*—The provisions of section 1 of the act cited under (a) entitled "An act to prevent desertions from the Army, and for other purposes," are applicable to enlisted men of the Marine Corps by force and effect of the section cited; but those of sections 2, 3, and 4 of that act are inapplicable thereto.

23 Stat. L., 60; act June 26, 1884.

**Ensigns.**—The act of June 26, 1884, cited, provides that from and after the passage of this act all graduates of the Naval Academy who are assigned to the line of the Navy on the successful completion of the six years' course shall be commissioned ensigns in the Navy.

(a) Sec. 2.

(a) *Grade of junior ensign abolished.*—That the grade of junior ensign in the Navy is hereby abolished, and the junior ensigns now on the list shall be commissioned ensigns in the Navy: *Provided*, That nothing in this act shall be so construed as to increase the number of officers in the Navy now allowed by law.

(b) Sec. 3.

(b) *Repeal.*—That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

**Envelopes, purchase of, opinion of Attorney-General respecting.**—The provisions of the act cited make it obligatory upon the Comptroller of the Treasury to render a decision upon any question involving a payment to be made by or under the head of any Executive Department, and contemplate the construction by him of statutes.

Act July 31, 1894, ch. 174, s. 8; A. G. Op. of May 22, 1895, affirmed; 21 A. G. Op., 181, Olney, May 23, 1895.

(*a*) *Contract for envelopes.*—A question regarding the construction of the section cited under (*a*), which provides that "the Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public, or for use by his own or other Departments, and to be of sufficient importance to warrant its submission to the Attorney-General for his opinion thereon."

(*a*) Ibid. Act Jan. 12, 1895, ch. 23, s. 96.

(*b*) *Repealed by implication.*—The conclusion that a statute is repealed by implication is only reached when there is irreconcilable conflict and when the two statutes can not by reasonable construction stand together; and in measuring the legislative intent as to the scope to be given to a statute in its operation upon previous statutes, not specifically referred to, a consideration of the effect upon the public welfare must necessarily be taken in view.

(*b*) 3 A. G. Op., 438; 2 A. G. Op., 260, cited; 21 A. G. Op., 181.

(*c*) *Has no application.*—Applying the rule of construction stated in paragraph (*b*), and construing the provisions of section 96 of the act of January 12, 1895, in connection with the sections cited under (*c*), *held* that the section of the act of 1895, referred to, has no application when an exigency may require an immediate delivery of envelopes to a particular Department, and the public service might be seriously impaired by the necessity of a requisition upon the Postmaster-General.

(*c*) Rev. Stat., ss. 3709, 3710.

(*d*) *Exigency.*—In the event of an exigency requiring an immediate delivery of envelopes, the provisions of the section cited under (*d*), and the head of the Department in which the exigency exists may make the purchases required by the exigency.

(*d*) 21 A.G.Op., 181; Olney, May 23, 1895.

**Estimates for pay of the Navy.**—The statute cited provides "That the Secretary of the Navy is hereby directed to report to Congress, at its next and each regular session thereafter, the amount expended during the prior fiscal year from the appropriations for the pay of the Navy, Bureaus of Navigation, Ordnance, Equipment and Recruiting, Yard and Docks, Medicine and Surgery, Provisions and Clothing, Construction and Repair, and Steam-Engineering, for civilians employed on clerical duty, or in any other capacity than as ordinary mechanics and workingmen, and submit, under the estimates for such civilian employees for the fiscal year 1887, and each fiscal year thereafter."

23 Stat. L., 295, ch. 43, s. 3.

**Evidence.**—That in the trial of all * * * persons charged with the commission of crimes, offenses, etc., * * * before courts-martial and courts of inquiry, * * * the person so charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him. He may testify orally or by deposition.

Rev. Stat., s. 858.

Cornett v. Williams, 20 Wall., 226.

Rev. Stat., s. 1500; 16 A.G.Op., 20.

**Examination, temporarily suspended.**—If after a naval officer has appeared before an examining board the examination is temporarily suspended, and he, being given permission to be absent at home until notified, fails to receive notice until after the examination is concluded and he is retired, being thus debarred the right of presenting material testimony in his defense, the President may revoke his action in approving the proceedings and findings of the board for the purpose of allowing the officer a rehearing.

Rev. Stat., s. 1559. See note, s. 1411; Meigs v. U. S., 19 C. Cls. R., 497.

**Extra compensation.**—If a retired officer is designated by Congress to perform services which could not be required of him, such as the superintendence of the erection of a public building, he may receive extra compensation therefor.

Rev. Stat., s. 1505; A. G. Op., 527.

**Failing in examination.**—The loss of date need not be contemporaneous with the term of suspension, but must agree therewith in point of duration.

Rev. Stat., ss. 1378, 1381, 1382, 1475, 1556; 18 A. G. Op., 156, Garland, Apr. 21, 1885.

**Fleet paymaster.**—No designation other than that made by the President entitles a naval paymaster to the place and perquisites of paymaster of the fleet.

(a) 15 A. G. Op., 316.

(a) *Retired on furlough pay.*—An officer retired on furlough pay is to be paid according to the provisions of section 1593 of Revised Statutes.

Rev. Stat., 1587.

**Funeral expenses.**—The expenses of the funeral of an officer who dies in a foreign country while on duty there, equal to one month's sea pay, shall be defrayed, etc.

13 A. G. Op., 341.

But in the case of a naval officer who has started on a foreign service, but dies in a United States port at which his vessel touches, this statute does not apply. It comes within the prohibition of the statute cited.

Rev. Stat., 1454, 1594; 18 A. G. Op., 96. Brewster, Jan. 5, 1885.

**Furlough pay.**—An officer retired on furlough pay under section 1454, cited, can not be transferred on the retired pay list under second section cited with increase of pay; such increase is forbidden by the act of August 5, 1882, chapter 391.

(a) Id.

(a) *Transferred to the retired pay list.*—Nor can an officer be simultaneously retired on furlough pay and transferred to the retired pay list, so as to give him the pay of the latter.

(b) Rev. Stat., s. 1588; Brown v. U. S., 113 U. S., 568; 16 A. G. Op., 22.

(b) *Application of the law.*—Section cited does not apply to officers retired on furlough pay.

Rev. Stat., s. 1592.

**Grade pay.**—The term "grade:" "Officers on the retired list, when on active duty, shall receive the full pay of their respective grades."

(a) Thornley v. U. S., 16 C. Cls. R., 3.

(a) *Increase of pay.*—Navy officers on the retired list are not entitled to increase of pay by reason of longevity while thereon. The periods of five years' service contemplated by this statute for increase of pay are grades within section 1588.

(b) Rutherford v. U. S., 18 C.Cls. R., 339.

(b) *Grade.*—The term "grade" refers to the divisions of officers into five-years periods of service. A chief engineer retired in the third period of five years' service is entitled to 75 per cent of the sea pay of that grade, and not to the highest pay of a chief engineer who has served over twenty years.

**"Graduating examinations."**—These words mean that examination which, under the regulations of the Naval Academy, takes place after the prescribed term of sea service has been performed. Assignments of relative rank, as between members of the same class, based upon results of such examination, are in conformity with law.

Rev. Stat., s. 1519; 15 A. G. Op., 637.

**Gunners.**—The power of the Secretary of the Navy to appoint acting gunners is authorized by section 1410, Revised Statutes. Such gunners, however, are not petty officers. Acting gunners are liable to dismissal at the will of the Secretary.

Rev. Stat., s. 1410; 15 A. G. Op., 564; Muse v. U. S. 19 C. Cls. R., 441; Foster's Case, 23 id., 90.

**Gunboats, appropriations for.**—The act cited contemplates construction of light-draft protected gunboats of steel, and does not authorize the building of such gunboats on the "composite plan," a vessel of which some other material than steel forms a substantial integral part. If it be the fact that in naval architecture the term "steel," as descriptive of a vessel, has a special meaning, and includes a vessel built on the composite plan as well as a steel vessel proper, an opposite conclusion might be reached.

Act Mar. 3, 1893, ch. 212; act Mar. 3, 1886, ch. 894; 24 Stat. L., 215; 20 A. G. Op., 617, Olney, June 1, 1893.

**Hazing.**—Hazing at the Academy is made punishable by dismissal, upon the finding and recommendation of a court-martial of not less than three commissioned officers and the approval of the superintendent, and such dismissal makes the offender ineligible to reinstatement or reappointment.

18 Stat L., 203; act June 23, 1874, ch. 453; 15 A. G. Op., 80.

(*a*) To constitute the offense of "hazing" at the Naval Academy under the act cited, it is essential that the victim should be a new cadet of the fourth class. Hence, unless the charge against the accused alleges that the victim was a new cadet of the fourth class, a court-martial organized under the statute would have no jurisdiction over it. An allegation that the victim was a candidate for appointment or admission to the Academy is insufficient.

(*a*) 18 A.G.Op., 292. Opinion delivered Nov. 12, 1885, by Garland.

(*b*) "*An older cadet.*"—Where a cadet entered the Naval Academy and became a member of the fourth class in 1885, and also remained a member of the same class in 1886, he is at the latter period as much an "older cadet" within the definition of the offense of "hazing" as a cadet who, having entered the Academy at the same time (1885), has since been advanced to a higher class and (equally with the latter) is capable of committing the offense.

(*b*) 18 A.G.Op., 507, Garland, Nov. 16, 1886; ib., 292, Garland, Nov. 12, 1885.

(*c*) *Cadet of second class.*—Where the record of the proceedings of a court-martial in the case of a naval cadet of the second class, who was tried under the act of June 23, 1874, for the offense of hazing, showed that the acts complained of were pulling the nose, striking at, striking, and otherwise maltreating a naval cadet of the fourth class: *Held*, that these facts, in conjunction with other circumstances, present a case containing all that is essential to constitute the offense of hazing within the meaning of the statute, and that the court had jurisdiction of the complaint.

(*c*) 18 A.G.Op., 376, Garland, Mar. 12, 1886.

U.S. v. Bank of the Metropolis, 15 Pet., 377; U. S. v. Cobb, 11 F. R., 76; Lavalette v. U.S., 1 C. Cls. R., 147; 5 A. G. Op., 28, 87, 122, 664; 2 id., 110, 463; 3 id., 684; 8 id., 214; 11 id., 189; 12 id., 169, 355; 13 id., 389; 9 id., 32.

**Head of a Department.**—In general, the head of a Department can not supervise or reverse the decisions and acts of his predecessors.

(a) 11 A. G. Op., 117.

(a) *Interference with.*—When such a head has rightfully assumed jurisdiction, another coordinate Department should not interfere with its control of the particular case.

(b) 13 A. G. Op., 113.

(b) *Delay of action by.*—Delay of action by the head of a Department should not be allowed at the request of a committee of Congress.

(c) 7 A. G. Op., 594.

(c) *Certify by delegation.*—The head of a Department can not certify by delegation when not authorized to do so by Congress.

(d) 20 A. G. Op., 573, Olney, Apr. 12, 1893.

(d) *Personal liability of.*—The head of a Department incurs no personal liability by executing an instrument which should not have been executed, if he acts in reliance upon properly chosen subordinates whose ability and good faith he has no reason to doubt.

U. S. v. Ross, 1 Gall., 624.

**High seas.**—The words "high seas" mean any waters on the seacoast which are without the boundaries of low-water mark, although such waters may be in a roadstead or bay within the jurisdictional limits of a foreign government.

(a) U. S. v. Grush, 5 Mason, 290.

(a) *Fauces terræ.*—The uninclosed waters of the ocean on the seacoast outside the *fauces terræ* are also included in the words "high seas."

Act Jan. 4, 1889, ch. 19, s. 2; 19 A. G. Op., 296.

**Hospital, Marine, Service.**—The provision in the statute cited that "no officer shall be promoted to the rank of passed assistant surgeon until after four years' service," applies to all assistant surgeons in the Marine-Hospital Service without any exception.

21 A. G., Op. 59, Olney, Sept. 22, 1894.

**Hydrographic Office, purchase of supplies.**—All purchases and contracts for supplies in any of the Departments of the Government must be made by advertisement unless immediate delivery is necessary.

Rev. Stat., s. 3709; act Jan. 27, 1894, ch. 22; act Apr. 21, 1894, ch. 61.

(a) The first two sentences of the section cited as amended by the acts cited apply to purchases anywhere in the United States. The remaining three sentences apply only to purchases in the city of Washington.

(b) Act Apr. 21, 1894, s. 2.

(b) The word "miscellaneous," in the urgent deficiency act, cited, must be restricted to that class of commodities which must be purchased on a considerable scale and used alike by many or all of the various Departments and Government establishments in the city of Washington.

Rev. Stat., s. 1588; U. S. v. Burchard, 125 U. S., 176; 19 C. Cls. R., 137; Potts v. U. S., 125 U. S., 173.

**Incapacity**, cause of, marks the line between the two classes of retired officers referred to in the section cited.

21 Stat. L., 164, ch. 129; Supp. Rev. Stat., 290, 291.

**Judge-Advocate-General.**—The statute cited provides for the appointment, for a term of four years, from the officers of the Navy or the Marine Corps, of a Judge-Advocate-Gen-

eral of the Navy, whose office shall be in the Navy Department.

(a) *Entitled to shore pay only.*—Under the provisions of the act of June 8, 1881 (21 Stat., p. 164), an officer of the Navy serving as Judge-Advocate-General is entitled to shore pay only. (a) 28 C. of C., p. 468.

(b) *Not entitled to sea-pay rations.*—The provisions of the Revised Statutes (sec. 1679) that "No person not actually attached to and doing duty on board a sea-going vessel," with certain exceptions, "shall be allowed a ration," precludes the allowance of a sea-pay ration to the Judge-Advocate-General, whose duty is in the Navy Department (Lemly *v.* The United States, 28 C. of C., p. 468). In this decision the cases relating to sea pay, sea service, and military and naval allowances are examined.

**Lien laws, property of United States, contractors.**—Assuming that the title to the land on which a dry dock is built, and the exclusive jurisdiction over it, are in the United States, the mechanic's lien laws of South Carolina do not operate thereon, and claims under such laws may be ignored in settlements with contractors. 21 A. G. Op., 19, Olney, May 11, 1894; the Siren, 7 Wall., 152; Carr *v.* U. S., 98 U. S., 432; opinion reaffirmed Nov. 7, 1894. See vol. 21, p. 78.

**Line, officers of.**—The commissioned officers and warrant officers on the active list of the Navy of the United States, and the petty officers, seamen, ordinary seamen, firemen, coal heavers, and employees in the Navy, shall be entitled to receive Rev. Stat., s. 1556.

**Longevity pay.**—The longevity pay is payable only from the date of commission, which is the actual time of the President's signing of the commission, and not an antecedent date mentioned in its body. Young *v.* U. S., 19 C. Cls. R., 145.

(a) *Credit for length of service.*—The statute of 1883, chapter 97, deals with the credit for length of service as it might have been given when the grade having graduated pay was first held by an officer who had served in the Volunteer Navy. Subsequent service is not within it. It does not increase the salary of a lower grade antecedently held by an officer. The pay acts apply only to the grades held by officers while such acts were in force. Credit for length of service can not be given in a grade which did not have graduated pay when held by the officer, merely because such pay was subsequently attached to it. (a) Act ——, 1883, ch. 97; U. S. *v.* Rockwell, 120 U. S., 60; 21 C. Cls. R., 332; U. S. *v.* Mullan, 123 Id., 186.

(b) *Volunteer officers entitled to credit.*—Under the act of 1883 a naval officer who served in the Volunteer Navy is entitled to credit for such service in the lowest grade in the Regular Navy having graduated pay at the time he held it. (b) Id.

(d) *Service at Naval Academy.*—So service as a midshipman at the Naval Academy is service as an officer in the Navy within the longevity acts. (d) U. S. *v.* Baker, 125 U. S., 646; 23 C. Cls. R., 181, 496.

(e) *Service as paymaster's steward in Marine Corps gives credit.*—And, under those acts, an officer in the Marine Corps who served as paymaster's steward is entitled to be credited with the time of such service. (e) Muse *v.* U. S., 19 C. Cls. R., 441.

(f) Thornley v. U. S., 120 U. S., 310; 18 C. Cls. R., 111; Brown v. U. S., 113 U. S., 568; 18 C. Cls. R., 537.

(f) *Retired officers not to receive increased pay for longevity.*—Naval officers, when on the retired list, whether commissioned or warrant, are not entitled to increase of pay by reason of *longevity.*

(g) Id.

(g) *Increase of pay because of.*—Navy officers on the retired list are not entitled to increase of pay by reason of longevity while thereon.

Rev. Stat., s. 4290; U. S. v. Gilbert, 2 Sumner, 19; Jones v. The Phœnix, 1 Pet. Adm., 201; Malone v. Bell, id., 139; Herron v. The Peggy, Bee Adm., 57.

**Log book.**—The entries in the log are evidence so far only as provided by statute.

(a) Bunge v. The Utopia, 1 F. R., 892.

(a) Facts stated in an official log by those having knowledge thereof must, in the absence of mistake, be taken as true as against the ship.

(c) Jones v. The Phœnix, supra; Douglass v. Eyre, Gilpin, 147; The Hercules, 1 Sprague, 534.

(c) The entry in the log book is presumptive but not conclusive evidence of its truth. It may be disproved.

21 Stat. L., 290, ch., 249; 23 Stat. L., 295, ch. 43, s. 3. See "Estimates for pay of the Navy."

**Machinists.**—The statute cited provides for the pay of machinists honorably discharged from the Navy.

In re Doyle, 18 F. R., 369; Cf. U. S. v. Bainbridge, 1 Mason, 71; Wilkes v. Dinsman, 7 How., 89; Re Hayes, 15 Rep., 259; Re McNulty, 2 Lowell, 270; U. S. v. Stewart, Crabbe, 265; Re Gregg, 15 Wis., 479; Re Shugru, 3 Mackey, 323; Re Webb, 24 How. Pr. (N.Y.), 247; Re Collins, 25 id., 157.

**Marine Corps,** *enlistments therein.*—The Marine Corps is part of the Navy, not of the Army, and that minors over 18 may be enlisted therein without the consent of parents or guardians was held by the Federal courts.

(a) Commonwealth v. Comac, 1 Serg. & R., 87.

(a) The parents' consent might be given after the enlistment, under statute of January 20, 1813.

(b) Wilkes v. Dinsman, 7 How., 89; 12 How., 390.

(b) *Marines, how regarded.*—Marines were regarded as persons "enlisted for the Navy" within the statute of 1837.

(c) Re McNulty, 2 Lowell, 270; U. S. v. Stewart, Crabbe, 265, ss. 1419 and 1420. See notes, ss. 1117, 1418.

(c) *Age, size, etc., of recruits for.*—Until the year 1858 there was no statute expressly regulating the age, size, citizenship, or other qualifications for recruits in the Marine Corps. Such a contract may be avoided by the minor himself, by the parent or guardian, or by the United States.

(d) Re Shugru, 3 Mackey, 324.

(d) *Marines not enlisted for the Navy.*—Persons enlisted in the Marine Corps are not enlisted in the Navy.

(e) Rev. Stat., s. 1449; 10 A. G. Op., 129. See s. 1246.

(e) *Discretionary power.*—The statute of 1861, chapter 42, section 17, gave the Secretary of the Navy discretionary power to select, for the trial of officers of the Marine Corps, such commissioned officers, under his control and orders, as he deemed proper.

(f) Rev. Stat., s. 1454; Magaw v. U. S., 16 C. Cls. R., 3; 15 A. G. Op., 445.

(f) *Marine Corps.*—There is but one rate of pay fi by law for officers of the Marine Corps retired.

(*g*) *Moneys appropriated for pay of.*—All balances of moneys appropriated for the pay of the Navy or pay of the Marine Corps, for any year existing after the accounts for said year shall have been settled, shall be covered into the Treasury.

(*g*) Act July 26, 1886; 24 Stat. L., 157.

(*h*) *Officer of, not entitled to ration, etc.*—An officer of the Marine Corps is not a naval officer, and is not entitled to this ration when attached to a seagoing vessel. Under section 1612 he is subject to section 1269.

(*h*) Rev. Stat., s. 1528; Reid *v.* U. S., 18 C. Cls. R., 625.

(*i*) *Commandant, how appointed.*—The commandant now has the rank and pay of colonel, and is appointed by selection by the President from the officers of the Corps.

(*i*) Rev. Stat., s. 1596; 18 Stat. L., 58.

(*j*) *No appointments to be made.*—By the statute of June 30, 1876, chapter 159, no appointments are thereafter to be made, except by promotion, to fill vacancies in the list of commissioned officers of the Marine Corps until their number is reduced, by casualties or otherwise, to 75.

(*j*) 19 Stat. L., 65.

(*k*) *Promotions to fill vacancies.*—By the statute of January 30, 1885, chapter 43, no appointments are thereafter to be made, except by promotion, to fill vacancies occurring in the list of commissioned officers of this Corps until their number is reduced, by casualties or otherwise, below 75, as fixed by the act of 1876, and after such reduction the whole number of such commissioned officers on the active list shall not exceed 75.

(*k*) 22 Stat. L., 293; act Jan. 30, 1885, ch. 30.

(*l*) *No commutation for forage for.*—Sections cited provide that no commutation for forage for the Marine Corps shall be paid.

(*l*) 22 Stat. L., 295, 480; 23 Stat. L., 294, 432.

(*m*) *Retirement.*

(*m*) Rev. Stat., s. 1243; 12 Stat. L., 596, s. 12; act July 17, 1862.

(*n*) *Marines not strictly seamen.*—Marines, though not strictly seamen, were so regarded in the case cited.

(*n*) Wilkes *v.* Dinsmore, 7 How., 89; 12 How., 390.

(*o*) *Allowed a premium for reenlistment.*—"Persons enlisted for the Navy," allowing a premium for reenlistment, and as entitled to the benefit of a special act for the relief of the "officers and seamen" of a United States vessel.

(*o*) 15 Stat. L., 153; 8 A. G. Op., 28.

(*p*) *Is a military body.*—The Marine Corps is a military body belonging primarily to the Navy and being under the control of the Navy Department; when ordered into service in connection with the Army it may be under the command of Army officers.

(*p*) U. S. *v.* Dunn, 120 U. S., 249; 21 C. Cls. R., 20.

(*q*) *A captain in charge of clothing entitled to allowance.*—A captain in the Marine Corps who acts as captain and has charge of clothing is entitled to an allowance therefor.

(*q*) U. S. *v.* Freeman, 1 Wood & M., 45.

(*r*) *Credit for service as paymaster's steward.*—A marine officer is entitled to be credited with the length of time he was employed as a paymaster's steward in the volunteer service.

(*r*) Rev. Stat., s. 1600. Notes on U.S. Stats., p. 416, (note on s. 1412); Muse *v.* U. S., 19 C. Cls. R., 441.

(*s*) *Credit for service as enlisted man.*—Service by a naval officer as an enlisted man in the Marine Corps is to be credited to him in computing his longevity pay under the statute cited.

(*s*) 22 Stat. L., 497, note, s. 1521; U. S. *v.* Dunn, 120 U. S., 249; 21 C. Cls. R., 20.

(t) Rev. Stat., s. 1613; U. S. v. Bond, 124 U. S., 301; 21 C. Cls. R., 457.

(t) *Musicians, extra compensation for.*—That additional compensation provided for marines who compose the Marine Band, while performing at the Capitol, may be claimed by all marines attached to the band, whether they are formally rated as musicians or not.

(u) Rev. Stat., ss. 1622, 1623; 15 A. G. Op., 444.

(u) *Retiring of officers of.*—In the case of a lieutenant who was duly found incapacitated, not as an incident of his service, the President indorsed in the proceedings: "I concur in opinion with the retiring board. * * * Let him be retired on furlough pay." *Held* that the officer became entitled to receive 75 per cent of the pay of the actual rank he held at date of retirement, notwithstanding a different rate of pay (viz, furlough pay) was named by the President.

(v) Rev. Stat., s. 1601; notes on U. S. Statutes, p. 429, note on s. 1596.

(v) The section cited, which fixed the rank of commandant of the Marine Corps as brigadier-general, has been repealed.

(w) Rev. Stat., s. 1606. See notes on U. S. Stats., p. 383, note on s. 1117, and note on 1418, p. 416.

(w) Term of enlistment in, for a period of not less than five years.

(x) Rev. Stat., s. 1512. See note, s. 1878.

(x) "The officers of the Marine Corps shall be entitled to receive the same pay and allowances, and the enlisted men shall be entitled to receive the same pay and bounty for reenlisting, as are or may be provided by or in pursuance of law for the officers and enlisted men of like grades in the infantry of the Army."

Rev. Stat., s. 417; 18 Stat. L., 121, ch. 339; act June 20, 1874; Mar. 3, 1881, ch. 141.

**Marine schools.**—Upon application of the governor of the State vessels of the Navy may be furnished for nautical schools at New York, Boston, Philadelphia, Baltimore, Norfolk, and San Francisco.

(a) 21 Stat. L., 505, ch. 141.

(a) The act cited extends the provisions of the statute (18 Stat. L., 121) to the ports of Wilmington, Charlestown, Savannah, Mobile, New Orleans, Baton Rouge, Galveston, and in Narragansett Bay.

(b) *Instructors in nautical schools.*—Officers of the Navy may be detailed as superintendents of or instructors in nautical schools, which, however, shall not be used as places of punishment.

Rev. Stat., s. 1466; 22 Stat. L., 472.

**Master.**—The title of the grade of master changed. The act of March 3, 1883, as per citation, declares that the grade of master "is changed to that of lieutenants, and the masters now on the list shall constitute a junior grade of, and be commissioned as, lieutenants, having the same rank and pay as now provided by law for masters; but promotion to and from said grade shall be by examination as provided by law for promotion to and from the grade of master, and nothing herein contained shall be construed as to increase the pay now allowed by law to any officer in the line or staff."

Rev. Stat., s. 1541; Steele v. U. S., 113 U. S., 128; 19 C. Cls. R., 181.

**Material, old, sale of.**—The section cited provides for the sale of unserviceable vessels and materials. But the private sale of old material from the breaking up of a war vessel by a naval officer to a contractor for repairs of a war vessel and machinery violates this section.

(a) *Exchange not permitted.*—The Secretary of the Navy must proceed according to this provision, and can not make an exchange, even when advantageous to the service, of a vessel belonging to the Navy.

(a) 14 A. G. Op., 369.

**Mathematics, professors of.**—Such professors must pass a physical and professional examination before appointment.

Rev. Stat., s. 1400; act Jan. 20, 1881; 21 Stat. L., 317.

**Medical Corps.**—The active list of the Medical Corps shall consist of fifteen medical directors, fifteen medical inspectors, fifty surgeons, and ninety assistant and passed assistant surgeons.

Rev. Stat., s. 1368, amended by 22 Stat. L., 285; act Aug. 5, 1882.

**Medicine and Surgery, Chief of the Bureau of.**—The Chief of the Bureau of Medicine and Surgery in the Navy Department is amenable to the jurisdiction of a naval court-martial upon charges and specifications preferred against him for acts done as such chief.

Rev. Stat., ss. 419, 426; 18 A. G. Op., 176, Garland, May 13, 1885.

**Midshipmen**, examination of, under the United States statutes.

12 Stat. L., 583; Benjamin v. U. S., 10 C. Cls. R., 474.

**Mileage.**—And officers of the Navy traveling abroad under orders hereafter issued shall travel by the most direct route, the occasion and necessity for such order to be certified by the officer issuing the same; and shall receive, in lieu of the mileage now allowed by law, only their actual and reasonable expenses, certified under their own signatures and approved by the Secretary of the Navy.

22 Stats., 284. See notes to ss. 74 and 1596.

(a) *Same by land and by sea.*—The statute of June 30, 1876, chapter 159 (19 Stat. L., 65), repeals so much of the statute of 1874 as applies to naval officers engaged in public business; allows them 8 cents per mile in lieu of their actual expenses, and provides that thereafter enlistments in the Navy shall cease until the number of enlisted men is reduced to 7,500. Under this statute there is no distinction between travel by land and by sea.

(a) U. S. v. Temple, 105 U. S., 97; 14 C. Cls. R., 377; 15 A. G. Op., 309; U. S. v. Graham, 110 U. S., 219; 18 C. Cls. R., 83.

(b) *Computed by shortest route.*—Mileage is computed, in the absence of special circumstances, upon the basis of the shortest route of ordinary travel.

(b) Du Bose v. U. S., 19 C. Cls. R., 514; Hannum v. U. S., id., 516; Allderdice v. U. S., id., 511.

(c) *May be forfeited.*—It may be forfeited by the officer's fault, as by his absence on private business and consequent failure to join his ship before sailing.

(c) Perrimond v. U. S., 19 C. Cls. R., 509; Pendleton v. U. S., 21 id., 5.

(d) *Paymasters' clerks not entitled to.*—Paymasters' clerks are not officers within the meaning of this act of 1876, and are not entitled to the mileage thereby allowed.

(d) U. S. v. Mouat, 124 U. S., 303; 22 C. Cls. R., 293.

(e) *In certain cases officers entitled to mileage, even when provided with transportation.*—Under the act of 1876 a naval officer who has traveled under orders, whether on land or on sea, was entitled to the 8 cents mileage, even when the Government provides him with transportation.

(e) Temple v. U. S., 105 U. S., 97

(f) *Claim for traveling expenses depends upon acts of Congress.*—As an officer's claim for traveling expenses depends upon the acts of Congress, and not upon contract, the compensation for that part of a journey performed by him after June 30, 1876, under an order made before that date, is determined by the statute of 1876, while the re-

(f) U. S. v. McDonald, 128 U. S., 471; 23 C. Cls. R., 104. See U. S. v. Allen, 123 id., 345.

pealed act of 1874 applies to the preceding part of the journey.

(g) Alldordice v. U. S., 19 C. Cls. R., 511; Du Bose v. U. S., 19 C. Cls. R., 514.

(g) *Mileage for traveling on public business.*—A journey by an officer for the purpose of reaching home taken by authority of the Secretary of the Navy, before his discharge from the service of the Government, is on public business, and if public business was an element in an officer's circuity of route, he should recover mileage therefor.

(h) Hannum v. U. S., 19 C. Cls. R., 516.

(h) *Delinquent officer can not recover.*—If an officer is delinquent and is ordered to travel at his own expense, he can not recover of the Government.

(i) Hannum v. U. S., 19 C. Cls. R., 516; Griffin v. U. S., 2g C. Cls. R., 13.

(i) *Officer not obliged to take unusual route.*—An officer, although bound to travel by the shortest usually traveled route, is not obliged to take an extraordinary and unusual route because it is the shortest.

(j) Crosby v. U. S., 22 C. Cls. R., 131.

(j) *Good reason must be given for deviation from shortest route.*—When only the terminus of the journey is specified in the orders issued to a naval officer, the choice of route being left to his discretion, his mileage is to be calculated by the shortest usually traveled route, regardless of the distance actually traveled, unless good reason is shown for the deviation. This is true, although the order required the officer to leave for his station before a day stated, if other means of travel than those taken offered before that day.

(k) Barker v. U. S., 19 C. Cls. R., 288.

(k) *An officer detached and sent home by commander of squadron on account of uninhabitable quarters is on public business.*—If the commander of a squadron decides that the quarters assigned by the Department for certain warrant officers on their ship are not habitable and detaches them, with permission to return home, the cause of the officers' travel is public business, and they are entitled to mileage.

U. S. v. Graham, 110 U. S., 219; 18 C. Cls. R., 83. 15 A.G.Op., 309.

(l) *Distinction between traveling within the United States and in a foreign country.*—Under the act of 1876 mileage has been held allowable to officers of the Navy only when traveling on public business within the United States; for travel elsewhere their actual expenses alone being allowed.

(m) Ford v. U. S., 19 C. Cls. R., 519; Griffin v. U. S., 21 id., 13; Billings's Case, 23 id., 166.

(m) *General rules applicable to all mileage cases.*—(1) The right of an officer to mileage depends upon his having traveled upon public business, and it is ordinarily for his commanding officer to determine whether such business requires that he should travel; where an officer is delinquent and ordered to travel at his own expense, he is not entitled to mileage.

(2) An officer is ordinarily bound to travel by the shortest usually traveled route. He is not bound to choose an extraordinary and unusual route because it is the shortest, but he has no right to choose another because it is the longest.

(3) Where an officer does not travel by the most direct route, or, being ordered to travel by one route, is compelled to travel by another, he must bring to the accounting officers the authority or ratification of the Department, and if he neglects to do so, must establish in a judicial tribunal the facts upon which his right rests.

(*n*) Construction of the acts of 1838, 1886, and 1870, as to the rights of naval officers to mileage, may be found in cases cited. (*n*) Graham *v.* U. S., 110 U. S., 219.

(*o*) *Officer in Revenue-Cutter Service.*—An officer of the Revenue-Cutter Service is not entitled to mileage for travel on duty, but may be allowed actual traveling expenses. (*o*) 18 A.G.Op., 121, Brewster, Feb. 19, 1885; 17 Stat. L., 347, 511.

**Militia, application of fifth article of Constitution to.**—In the fifth article of amendments to the Constitution of the United States, providing that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger," the words "when in actual service in time of war or public danger" apply to the militia only. Johnson *v.* Sayre, 158 U. S., p. 109.

**Minors, contracts of.**—A minor who at the age of 19, with the consent of his father, enlisted in the Navy, has not the right on coming of age to demand his discharge under the rule which applies to his ordinary civil contracts. Rev. Stat., ss. 1418, 1419, 1420 (1624, art. 19), as amended by acts of May 12, 1879, and Feb. 23, 1881, s. 2.

(*a*) The United States has the right to prescribe the rules and conditions under which voluntary or compulsory services are to be rendered by citizens. (*a*) 21 Stat. L., 3 and 338, 21 A. G. Op., 327, Harmon, Apr. 16, 1896.

(*b*) The period at which persons reach their majority and become sui juris with respect to the ordinary affairs of life can not abridge this power of the General Government. (*b*) Id.

(*c*) If a statute authorizes a minor by enlistment to bind himself during his minority, he can bind himself for a further period. (*c*) Id.

(*d*) The phrase "other persons" in the act cited included minors above the age of 18 as well as men of full age. (*d*) Act Mar. 2, 1837.

**Minor of nineteen years bound by his contract.**—A minor, who at the age of nineteen years enlists in the Navy, is bound by his contract of enlistment, and has not the right to demand his discharge on coming to his majority. In opinion of Attorney-General, dated Apr. 16, 1896.

**National Guard, clerk absent as member of.**—An employee of a Department absent from his duty at prize drill, duly ordered by a superior officer of the National Guard of which the clerk was a member, is entitled to his pay while absent. 22 Stat. L., 563; read in connection with 25 Stat. L., 772, ss. 40, 42, 43, 46; 20 A. G. Op., 437, Aldrich, Acting A. G., Aug. 11, 1892.

**Nautical Almanac.**—The Nautical Almanac is a "nautical book." Rev. Stat., 432 and 436; 16 A. G. Op., 127.

(*a*) The Secretary of the Navy may place the supervision of the Nautical Almanac in charge of any officer or professor of mathematics in the Navy who is competent for that service. Such officer or professor, when so employed, shall be entitled to receive the shore-duty pay of his grade, and no other. (*a*) 21 Stat. L., 301; 16 A. G. Op., 127.

**Naval Academy, provisions concerning.** Act June 23, 1874, ch. 453; 18 Stat. L., 208; 15 A. G. Op., 80.

(*a*) *Board of Visitors to.*—Act of February 14, 1879, provides for a Board of Visitors to attend the annual examination of the Academy, each member to receive not exceeding 8 (*a*) Act of Feb. 14, 1879, ch. 68; 20 Stat. L., 284.

cents per mile mileage by the most direct route to and from his residence and Annapolis.

(b) Act of July 26, 1886, ch. 781; 24 Stat. L., 156.

(b) *Per diem.*—Statute cited under (b) allows each member $5 per day for expenses during actual attendance at the examination.

(c) Act Aug. 4, 1886, ch. 903; 24 Stat. L., 268.

(c) *Intoxicating liquors.*—The act cited under (c) provides that no part of any appropriation by Congress for expenses of the Board shall be used to pay for intoxicating liquors.

(d) Rev. Stat., s. 1517; 10 A. G. Op., 315, 320.

(d) *Age of cadets, eligibility.*—Candidates to, admission to, eligibility in respect of age, ineligible unless he is between 14 and 18 years of age.

22 Stat. L., 285.

**Naval cadets.**—This title was substituted for "Cadet midshipmen" by act of August 5, 1882. All of the undergraduates at the Naval Academy shall be thus designated.

(a) Rev. Stat., ss. 1514 and 1515; 16 A. G. Op., 621, 623, disapproving 10 id., 46, 315, 494; Benjamin v. U. S., 10 C. Cls. R., 474.

(a) *Examination of, etc.*—While a previous notification may not be essential to the validity of a recommendation, yet the date is so. Section 1515 is to be read as if the dates fixed by the regulations of the Academy for the examination of candidates were expressly inserted therein, and therefore the season for recommendations and nominations of cadet midshipmen begins after March 5 and expires on September 22 in each year. Each Member has the control of all appointments to be made during any current year of his term.

(b) Rev. Stat., s. 1517; 10 A. G. Op., 315, 320.

(b) *Eligibility as to age.*—Candidates for appointment as naval cadets must be between 14 and 18 years of age.

(c) Rev. Stat., ss. 1519 and 1525.

(c) The first section cited reads: "Cadet midshipmen found deficient at any examination shall not be continued at the Academy or in the service unless upon the recommendation of the Academic Board."

The latter section cited reads: "Cadet engineers shall be examined from time to time according to regulations prescribed by the Secretary of the Navy, and if found deficient at any examination, or if dismissed for misconduct, they shall not be continued in the Academy or in the service, except upon the recommendation of the Academy Board."

(d) 15 A.G.Op., 634.

(d) These provisions leave in the Secretary of the Navy no right to continue at the Academy, without the required recommendation, cadets found deficient in their studies.

(e) Rev. Stat., s. 1521; 15 A. G. Op., 637.

(e) "*Graduating examinations.*"—These words mean that examination which, under the regulations of the Naval Academy, takes place after the prescribed term of sea service has been performed. Assignments of relative rank, as between members of the same class based upon the results of such examination, are in conformity with law.

(f).

(f) *Cadet engineers.*—A naval cadet engineer who is not deficient at examination or dismissed for misconduct under section 1525, or under sentence of a court-martial, but is honorably discharged by the Secretary of the Navy against his will, still remains in the service and may recover his pay in the Court of Claims.

(g) *Vested rights of cadets.*—A naval cadet has no vested right to appointment as an officer in the Navy, and is liable to be discharged if there is no vacancy to which he can be appointed.

(g) Harmon's Case, 23 C. Cls R., 132.

(h) *Rank of naval cadets.*—Section 1521 of the Revised Statutes reads: "When cadet midshipmen shall have passed successfully the graduating examination at the Academy, they shall receive appointments as midshipmen and shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

(h) Rev. Stat., s. 1521. This section is amended by act of Aug. 5, 1882, ch. 391; 22 Stat. L., 285.

The act of August 5, 1882, cited under (h), repeals so much of the section quoted (1521) as is inconsistent with its provisions, to wit:

22 Stat. L., 285.

"That hereafter there shall be no appointments of cadet midshipmen or cadet engineers at the Naval Academy, but in lieu thereof naval cadets shall be appointed from each Congressional district and at large, as now provided by law for cadet midshipmen, and all the undergraduates at the Naval Academy shall hereafter be designated and called naval cadets; and from those who successfully complete the six years' course appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line and Engineer Corps of the Navy and of the Marine Corps: *And provided further*, That no greater number of appointments into these grades shall be made each year than shall equal the number of vacancies which has occurred in the same grades during the preceding year; such appointments to be made from the graduates of the year, at the conclusion of their six years' course, in the order of merit, as determined by the Academic Board of the Naval Academy; the assignment to the various corps to be made by the Secretary of the Navy upon the recommendation of the Academic Board. But nothing herein contained shall reduce the number of appointments from such graduates below ten in each year, nor deprive of such appointment any graduate who may complete the six years' course during the year eighteen hundred and eighty-two. And if there be a surplus of graduates, those who do not receive such appointment shall be given a certificate of graduation, an honorable discharge, and one year's sea pay, as now provided by law for cadet midshipmen.

"That any cadet whose position in his class entitles him to be retained in the service may, upon his own application, be honorably discharged at the end of four years' course in the Naval Academy, with a proper certificate of graduation.

"That the Secretary of the Navy may prescribe a special course of study and training at home or abroad for any naval cadet.

"That the pay of naval cadets shall be that now allowed by law to cadet midshipmen; and as much of the money hereby appropriated as may be necessary during the fiscal year ending June thirtieth, eighteen

hundred and eighty-three, shall be expended for that purpose."

(i) Act Aug. 5, 1882; U. S. v. Redgrave, 116 U. S., 474; 20 C. Cls. R., 226; Leopold v. U. S., 18 id., 546; Harmon's Case, 23 id., 406.

(i) *Surplus graduates, discharge of.*—The provision of the act of 1882, just quoted, for the discharge of surplus naval cadet graduates, was prospective only, and did not apply to the classes of 1881 and 1882, and naval cadets who, prior to this act, had fully completed their course at the Academy, and received their diplomas, became by this act graduates.

(j) 22 Stat. L., 472; act Mar. 3, 1883.

(j) *Number of midshipmen provided for.*—The statute of March 3, 1883, makes provision for ninety-one midshipmen, the title of which grade is hereby changed to ensign, and the midshipmen now on the list shall constitute a junior grade of, and be commissioned as, ensigns, having the same rank and pay as now provided by law for midshipmen, but promotions to and from said grade shall be under the same regulations and requirements as now provided by law for promotion to and from the grade of midshipmen, and nothing herein contained shall be construed as to increase the pay now allowed by law to any officer of said grade or of any officer of relative rank. * * * And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy.

(k) 23 Stat. L., 60; act June 26, 1884.

(k) *Graduates.*—The statute cited confers the title of ensign upon cadets who successfully complete the six years' course at the Naval Academy and are assigned to the line of the Navy. The grade of junior ensign is abolished.

(l) 23 Stat. L., 291.

(l) *Allowed a ration.*—Cadets attached to any United States vessel or station and doing duty thereon shall be allowed a ration, etc.

25 Stat. L., 472, 24 Stat. L., 7, 151; 154; 23 Stat. L., 262, 292, 433; 22 Stat. L., 291, 477.

**Naval establishment**, increase of by the construction of steel cruisers.

Rev. Stat., s. 1756; 1 Com. D., 849.

**Oath of office.**—The language of the original act was, after "profit," in the second line, "under the Government of the United States, either in civil, military or naval departments of the public service," and the words in the third line, "and the persons embraced by the following," were here added. The original act was regarded as superseding the former laws prescribing an oath of office, whether general or applicable to departmental officers in the narrow sense of the term only.

This section was repealed by the act cited, which provides that hereafter the oath to be taken by any person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, except the President of the United States, shall be as prescribed in section 1757 of the Revised Statutes. But this repeal shall not affect the oaths prescribed by existing statutes in relation to the performance of duties in special or particular subordinate offices and employments.

Act May 13, 1884, ch. 46; 23 Stat. L., 22.

(a) *Before whom to be taken.*—The oath must be taken before an officer authorized to administer oaths by the laws of the United States, and a foreign consul residing in Mexico has not such authority.

(a) Otterberg's Case, 5 C. Cls. R., 430.

**Observatory, Naval.**—The statute cited provides for the erection of a new Naval Observatory.

Act July 26, 1886, ch. 781; 24 Stat. L., 156; 25 Stat. L., 463; 21 Stat. L., 64.

**Officers**, line, number allowed on active list. Active list of the Medical Corps.

Rev. Stat., s. 1363; 16 A.G.Op., 589; Rev. Stat., s. 1368 amended by 22 Stat. L., 285. See note to s. 1521.

**Officers, Navy**, three kinds in the Navy, (1) commissioned, (2) warrant, and (3) petty.

Rev. Stat., s. 1410; 15 A.G.Op., 561, 635; Grambe's Case, 23 C. Cls. R., 420.

**Parade, employees absent from duty.**—Employees of the United States who are members of the National Guard are not entitled to leave of absence from their respective duties without loss of pay or time in order to engage in rifle practice, even although in the general orders of the commanding general of the militia such rifle practice may be called a parade.

Rev. Stat., s. 49, ch. 328; 25 Stat. L., 779; 20 A. G. Op., 669, Olney, Sept. 29, 1893.

**Passed assistant (first) engineers, pay of.**—"The passed assistant engineers of the Navy shall receive during the third five years after the date from which they take rank as passed (first) assistants, when at sea, two thousand four hundred and fifty dollars; on shore duty, two thousand two hundred and fifty dollars; on leave or waiting orders, one thousand nine hundred dollars. During and after the fourth five years from such date, when at sea, two thousand seven hundred dollars; on shore duty, two thousand three hundred and fifty dollars; on leave or waiting orders, one thousand nine hundred and fifty dollars. And Revised Statutes, section fifteen hundred and fifty-six, is hereby amended accordingly."

23 Stat. L., 436; act Mar. 3, 1885, ch. 350.

This changes the provision of section 1556 of the Revised Statutes, edition 1878.

**Patents for inventions.**—A naval officer, or employee of the Government at a navy-yard, who has invented an article for use in the naval service and patented it, if the invention does not relate to a matter as to which he was specially directed to experiment with a view to suggest improvements, is entitled to compensation from the Government for the use of such article in addition to his salary or pay as such officer or employee.

Rev. Stat., s. 3718; 19 A.G.Op., 407, Miller, Oct. 4, 1889; James v. Campbell, 104 U. S. R., 356; U. S. v. Benedict Manufacturing Co., 113 U. S. R., 60; U. S. v. Burns, 12 Wall., 246; U. S. v. Palmer, 128 U. S. R., 262.

It makes no difference that the invention consists of an improvement upon an article already patented, and that

when the improvement was patented the officer or employee was assigned to the duty of superintending for the Government the manufacture of the article improved upon.

The Secretary of the Navy cannot legally contract with the patentee for the purchase of his patent, or for a license to use it, under an appropriation limited to the purchase of material and the employment of labor in the manufacture of such article out of it.

Rev. Stat., s. 3721; Rev. Stat., s. 3718; 20 A. G. Op., 329, Miller, Mar. 8, 1892.

**Patent rights—Ensign.**—The Secretary of the Navy may lawfully contract with an ensign of the Navy for the purchase of patent rights and improvements in "B. L. R. ordnance" for use in the Navy when the ensign was not employed to make experiments, paid himself the expenses of obtaining letters patent, and when no expense was authorized or facility furnished by the Bureau of Ordnance to aid him in making or perfecting his invention.

The former section (3721) applies to the case, and not the latter section cited.

Rev. Stat., s. 1558; 4 Stat. L., 757; 14 Stat. L., 33; U. S. v. Philbrick, 128 U. S., 52; U. S. v. Allen, 123 id., 347.

**Pay and allowances.**—The section of the Revised Statutes cited declares the pay and allowances to naval officers. But before the act of 1835 (4 Stat. L., 757) the Secretary of the Navy could make allowance from appropriations in gross to naval officers, beyond their pay, for quarters, furniture, lights, fuel, etc., and the act of 1866 (14 Stat. L. 33), by repealing the statute of 1835, restored the right to make such allowances.

(a) Rev. Stat., s. 1561; Notes on U. S. Statutes, p. 420, note on s. 1506; Young v. U. S., 19 C. Cls. R., 145.

(a) *Pay of an officer advanced in rank for eminent or conspicuous conduct, etc.*—The pay of an officer who has been advanced in rank "for eminent or conspicuous conduct in battle or extraordinary heroism" (see section 1506) is not one of the cases within sections 1561 and 1562, and can not run from a date anterior to that of his commission.

(b) Rev. Stat., s. 1562; Billings's Case, 14 A. G. Op., 547.

(b) *Increased pay of a promoted officer.*—The words "the increased pay of a promoted officer shall commence from the date he is to take rank, as stated in his commission," as used in the statute of 1870, chapter 295, section 7, applied to such advancement or promotion in rank, and such only, as entitled the officer advanced or promoted to an increase of pay over what he received at the time his advancement or promotion actually transpired, the words "increased pay" being used relatively to the pay he then received.

(c) Rev. Stat., s. 1562; Austin v. U. S., 20 C. Cls. R., 269; Hunt v. U. S., id., 554; 16 A. G. Op., 592; 116 U. S., 394.

(c) *Cases of delayed examination.*—If the examination of a naval officer is postponed through no fault of his, and he, upon examination afterwards, is found unqualified and is suspended from promotion for one year, with corresponding loss of grade when reexamined (see section 1505), he is not entitled to the pay provided for by this section.

(d) Mileage, allowances for. *See* Mileage, p. —.

(e) Rev. Stat., s. 1568; Larkin v. U. S., 5 C. Cls. R., 535.

(e) *Storekeeper.*—The commander of a squadron can not appoint a civilian naval storekeeper, and a person so appointed can not recover salary as such.

(*f*) *Duty as light-house inspector does not entitle to sea pay.*—A naval officer assigned to duty as a light-house inspector, although making tours of inspection by sea, is not entitled to sea pay. (*f*) Schoonmaker *v.* U. S., 19 C. Cls. R., 170.

(*g*) Service of temporary character on vessels at anchor near shore not sea duty. (*g*) See "At sea," defined, p. —, under head of "Sea service and pay."

(*h*) *Compensation of retired officers.*—These sections supersede and take the place of all provisions in force at the adoption of the Revised Statutes regulating the compensation of retired naval officers, whether of the line or staff. (*h*) Rev. Stat., ss. 1588, 1593; 15 A. G. Op., 317.

(*i*) Retired officers not entitled to increased pay by reason of longevity. (*i*) Thornley *v.* U. S., 113 U. S., 310; 18 C. Cls. R., 111; Brown *v.* U. S., 112 U. S., 568; 18 C. Cls. R., 537.

(*j*) *Half sea pay.*—A lieutenant retired in the first five years of service because not recommended for promotion is entitled to only one-half his sea pay at the time of retirement under the last clause of section 1588. (*j*) Rev. Stat., s. 1588; McClure *v.* U. S., 18 C. Cls. R., 347; Thompson *v.* U. S., id., 604; Rutherford *v.* U. S. id., 339; Magaw *v.* U. S., 16 id., 3.

(*k*) *Furlough pay.*—The section cited does not apply to officers retired on furlough pay. An officer retired on furlough pay is to be paid according to the provisions of section 1593. (*k*) Rev. Stat., s. 1588; Brown *v.* U. S. 113 U. S., 568; 16 A. G. Op., 22; Rev. Stat., s. 1593; id.; 15 A. G. Op., 316.

**Pay and salaries.**—The section cited provides for the annual pay, or salaries, of officers of the line, warrant and petty officers, and men, including clerks to commanding officers. Rev. Stat., s. 1556.

The act of May 4, 1878, chapter 91, provides that no appointments shall be made to the position of clerks and secretaries to admirals, etc., from civil life; that these shall be selected from subordinate officers. 20 Stat. L., 50.

(*a*) *Passed assistant engineers* shall receive during the third five years after the date from which they take rank as passed (first) assistants, when at sea, $2,450, etc. (*a*) 23 Stat. L., 436; act Mar. 3, 1885.

(*b*) *Rate of pay* due a retired officer determined by the section cited. (*b*) Rev. Stat., s. 1588; Magaw *v.* U. S., 16 C. Cls. R., 3.

**Pay accounts.**—Neither the longevity act nor the act of March 3, 1883, authorizes a restatement of an officer's pay accounts so as to allow him credit in the grade he held before their enactment for the time he served in the Army or Navy reaching that grade. 22 Stat. L., 472; U. S. *v.* Foster, 128 U. S., 435. See notes on U. S. Stats., p. 429, note on s. 1600.

(*a*) The act of August 5, 1882, was constitutional, but did not create a vested right. (*a*) Barton's Case, 23 C. Cls. R., 376; Harmon's Case, id., 406.

(*b*) A naval officer is entitled to credit for services in the Army in computing his pay under the statute of 1883. (*b*) Jordan *v.* U. S., 19 C. Cls. R., 621.

(*c*) The second proviso of the act of August 5, 1882, merely prohibits additional pay for volunteer service, and does not forbid longevity pay founded on such service. (*c*) Hawkins *v.* U. S., 19 C. Cls. R., 611.

**Pay of the Navy and Marine Corps.**—Unexpended balances of moneys appropriated for the pay of the Navy and Marine Corps for the fiscal year ending June 30, 1884, are not available for the payment of the Navy and Marine Corps Rev. Stat., s. 3690; 20 Stat. L., 167; 18 A. G. Op., 412, Garland, June 11, 1886.

for services rendered during the fiscal year ending June 30, 1885.

Rev. Stat., s. 1378; U. S. v. Monat, 124 U. S., 303, 308; 22 C.Cls. R., 293.

**Pay Corps, who constitute it.**—Only those officers commissioned by the President.

(a) Rev. Stat., s. 1432.

(a) "No commanding officer of any vessel of the Navy shall be required to perform the duties of paymaster, passed assistant paymaster, or assistant paymaster."

(b) 1 Com. D., 698; Stat.L., vol., 12, p. 258.

(b) The words "passed assistant paymaster" were added by the revision.

Rev. Stat., s. 1475; 16 A. G. Op., 414, 651.

**Pay inspector.**—In this section the title "Pay inspector" expresses both title and grade in the Pay Corps. This section confers upon such officers the rank of commander only by relation to the rank of a line officer of that grade, and not the grade of commander. By "relative rank" the grades of this Pay Corps are made equal to, but not identical with, the grades of the line with which they are thereby associated.

(a) 22 Stat. L., 285; act Aug. 5, 1882.

(a) In the active list of the pay inspectors there shall be thirteen.

22 Stat. L., 285; act Aug. 5, 1882.

**Pay directors.**—Hereafter the active list of the Pay Corps shall contain thirteen pay directors.

22 Stat. L., 472; act Mar. 3, 1883; U. S. v. Hendee, 124 U. S., 309; 22 C. Cls. R., 134.

**Paymaster's clerk.**—The act cited constitutes a paymaster's clerk an officer.

See references under head of "Pay Corps," p —.

**Paymaster, passed assistant and assistant.**

(a) 22 Stat. L., 285; act Aug. 5, 1882.

(a) That the active list of the Pay Corps of the Navy shall hereafter contain twenty passed assistant and ten assistant paymasters.

Rev. Stat., ss. 4693, 4707; act June 27, 1890; 19 A. G. Op., 586, Miller, July 10, 1890.

**Pension, dependent parent.**—The first section of the act of June 27, 1890, is to be regarded as an amendment of the section (4707) cited; and, so regarded, the word "soldier" employed therein should be so construed to comprehend also *sailor and marine*, the term being used as a short expression to embrace all the persons under the first section cited, whose death entitled their parents to a pension.

Rev. Stat., s. 1662; Justice's Opinion, 1 Met. (Mass.), 580.

**Persons residing on lands ceded for navy-yards.**—Persons residing on lands ceded to the United States for navy-yards, forts, and arsenals, with State jurisdiction reserved only to serve civil and criminal process thereon, are not entitled to send their children to the schools of the town in which the lands are situated, or to a settlement or elective franchise there, by any length of residence, nor are they liable there for State, county, and town taxes.

U. S. v. Smith, 5 Wheat., 153. Rev. Stat., s. 4294; the Mariana Flora, 11 Wheat., 1; 3 Mason, 116.

**Pirates.**—Pirates may be lawfully captured by public or private ships of any nation, in peace or war.

Rev. Stat., s. 4294; see also "Prize, libel;" The Mariana Flora, 11 Wheat., 1; 3 Mason, 116.

**Piratical aggression.**—Where an armed vessel attacks a vessel of the United States upon the mistaken idea that she was a piratical cruiser, and without a piratical or felonious intent, and with no purpose of wanton plunder or

malicious destruction of property, it does not constitute a piratical aggression within this section.

(a) *Extends to foreign vessels.*—The provisions of the statute cited extend to foreign vessels, and no matter what liability the United States may incur to foreign States the courts are bound to carry them into effect. (a) Id.

(b) *American vessels offending.*—American vessels offending against our laws may be seized upon the ocean, and any foreign ship offending within our territorial jurisdiction may be pursued and seized upon the ocean and brought in for adjudication. (b) Id.

(c) *Commisson bona fide.*—When a vessel receives a commission bona fide and the crew acts under it bona fide, it ought, at all events in the courts of neutral nations, to be held a protection against the imputation of general piracy, though there may be irregularities in its granting. (c) The Palmyra, 12 Wheat., 1.

(d) *Predatory spirit in connection with defects of commission.*—If the insubordination and predatory spirit of the crew, in connection with the defects of the commission, be such as to excite justly founded suspicions, the captors are justified for bringing in the vessels for adjudication, and are exempted from damages and costs. (d) Id.; the Ambrose Light, 25 F. R., 408, 417.

(e) *Vessel armed for offense or defense.*—Whether the vessel is armed for offense or defense is immaterial, provided she commits the unlawful acts specified. Nor is it necessary, to bring the vessel within the statute, that there should be either actual plunder or an intent to plunder. It is sufficient that the act be committed from hatred, or an abuse of power, or from mischief. (e) Rev. Stat., s. 4295; U. S. v. Brig Malek Adhel, 2 How., 210.

(f) *Piratical.*—The word "piratical" is not to be limited to such acts only as by the laws of nations are denominated piracy, but includes such as pirates are in the habit of committing, "as defined by the law of nations." (f) Id. See also Rev. Stat., ss. 4296, 4297, 4298, and 4299. U. S. v. Brig Malek Adhel, 2 How., 210.

**Potatoes, desiccated.**—Desiccated tomatoes may be substituted for desiccated potatoes by the Secretary of the Navy. Rev. Stat., s. 1580; 21 Stat. L., 86, ch. 73.

**Precedence of officers.**—Article 21 of the Navy Regulations is within the authority conferred upon the Secretary of the Navy by the statute cited. Rev. Stat. s. 1547; 21 A. G. Op., 46, Olney, June 28, 1894.

(a) There is no inconsistency between sections 1483 and 1484, cited, in their operation upon the question of the precedence of engineer officers of the Navy. (a) Rev. Stat., ss. 1483 and 1484.

(b) A rule for ascertaining the date of precedence of officers on the active list of the Navy *held* to be in conflict with the act cited. (b) Act Aug. 5, 1882; Stat. L., 284.

(c) Status of members of the Staff Corps is governed by sections cited under (c). (c) Rev. Stat., ss. 1485, 1486, and 1487.

**Private sale of old material.**—A private sale of old material from the breaking up of a war vessel by a naval officer to a contractor for repairs to a war vessel and machinery violates this section. The Secretary of the Navy must proceed according to this provision, and can not make an exchange, even when advantageous to the service, of a vessel belonging to the Navy. Rev. Stat., s. 1541; Steele v. U. S., 113 U. S., 128; 19 C. Cls. R., 181; 14 A. G. Op., 369.

(a) Act Jan. 12, 1895, ch. 23, s. 56; 21 A. G. Op., 405, Harmon, Aug. 31, 1896.

(a) *Private laws.*—Under the statute cited the Public Printer should print, in slip form, and distribute 760 copies of private laws, postal conventions, and treaties.

(b) Act July 31, 1894, ch. 174, s. 8.

(b) To what appropriation the expense of these copies is to be charged is a question which may be asked of the Comptroller of the Treasury, and should not be answered by the Attorney-General.

Rev. Stat., s. 4632, The Merrimac, Blatch. Pr. Cas., 574.

**Prize**—*Armed merchant vessel not in service not entitled to share.*—An armed merchant vessel which is not in the service of the United States and has no commission from the Government is not entitled to share in the proceeds of a prize, although she is present at the capture and cooperates therein.

(a) Rev. Stat., s. 4624; 13 Stat. L., 314, s. 27.

(a) *Appraisal, etc., of property taken by Government.*—Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisement, and inventory shall be sent to the court in which proceedings are to be had; and if taken afterwards, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.

(b) 16 A.G.Op., 340; 17 Wall., 29. See also The Ellen Warley, Blatch. Pr. Cas., 204.

(b) The opinion cited discusses the case of the steamer *Nuestra Signora de Regla*, and advises that there should be an appeal to the Supreme Court of the United States. The claimants of the steamer were allowed damages for a detention for a period of 568 days. This the opinion considers excessive, and says that the number of days allowed for detention should be 274; and instead of allowance for detention there should have been allowed interest upon the value of the boat as appraised.

(c) Rev. Stat., s. 4622; act Mar. 25, 1862; 12 Stat. L., 374; The Nassau, 4 Wall., 634.

(c) *Commissioners, prize, duties of.*—Under the statute cited it was held that where the prize commissioners certified to the circuit court that a prize steamer had arrived in the district and was delivered into their hands, there was sufficient evidence before the court that the vessel was claimed as prize of war and was in the jurisdiction of a prize court.

(d) Rev. Stat., s. 4641; 15 A.G.Op., 576; C. Cls. R., 51, 67.

(d) *Distribution between vessels.*—The distribution here contemplated is that between vessels, or between vessel or vessels and the United States. They confer no right on the court to decree that the residue be distributed among individuals.

(e) Rev. Stat., s. 4639; 15 A.G.Op., 388; Root *v.* U. S., 9 C. Cls. R., 211.

(e) *Expenses incident to sale, how paid*—The United States district courts can not make the expenses incident to the sale of prize money a charge upon the fund for defraying expenses of suits in which the United States is a party

under this provision, if there was a prize fund upon which to charge the expenses.

(*f*) *United States district courts and questions of prize.*—Such courts take cognizance of questions of prize by virtue of their general jurisdiction.

(*f*) The Army Warwick, 2 Sprague, 123; 1 A. G. Op., 85; The Siren, 7 Wall., 152.

(*g*) *Circumstances which warrant suspicion but not condemnation.*—Prize courts properly deny damages or costs where there has been probable cause for seizure, which exists where the circumstances warrant suspicion but not condemnation.

(*g*) The Thompson, 3 Wall., 155; The Amelia, 1 Cranch, i; 4 Dall., 84; The George, 1 Mason, 24.

(*h*) *Capture without probable cause—restitution.*—But if the capture is made without probable cause, the captor, even though in command of a United States war vessel, is liable to make restitution in the full value of the property injured or destroyed, although the vessel is afterwards taken from him by superior force.

(*h*) The Charming Betsy, 2 Cranch, 64; Maley *v.* Shattuck, 3 id., 458; The Resolution, 2 Dall., 1; Hollingsworth *v.* The Betsey, 2 Bet. Adm., 330; The Grand Sachem, 3 Dall., 333; The Anna Maria, 2 Wheat., 327.

(*i*) *Order of restitution.*—An order of restitution proves neutrality, not lack of probable cause.

(*i*) Jennings *v.* Carson, 4 Cranch, 2.

(*j*) *Noncommissioned captor—salvage.*—A noncommissioned captor can proceed only in the prize court as for salvage, the amount of which is discretionary and reviewable by the appellate court.

(*j*) The Dos Hermanos, 10 Wheat., 306; The Aigburth, Blatch. Pr. Cas.

(*k*) *Revising judgment of prize courts.*—The Executive can not revise the judgment of prize courts.

(*k*) 11 A. G. Op., 117, 445.

(*l*) *Disavowing the capture.*—But it may disavow the capture, and thereafter the courts can not condemn the vessels as prize.

(*l*) The Florida, 101 U. S., 37.

(*m*) *Final disposition of a prize cause.*—A prize cause is finally disposed of when the captured property is adjudged to be or not to be lawful prize; for that is the judgment on the merits, and then the rights of the parties are fixed, and nothing remains to be done but the application of the judgment.

(*m*) Rev. Stat., s. 4640; Root *v.* U. S., 9 C. Cls. R., 211.

(*n*) *Maximum charge in bill of costs.*—In the case cited a charge by the prize commissioner in his bill of costs of 1 per cent custody fee on the proceeds of the vessel and cargo was disallowed as exceeding the maximum fixed by statute.

(*n*) Rev. Stat., s. 4646; Hattie, Blatch. Pr. Cas., 595.

(*o*) *Property captured on land.*—Property captured on land by a United States naval force is not "maritime prize."

(*o*) Rev. Stat., s. 4613; Mrs. Alexander's Cotton, 2 Wall., 404; U. S. *v.* Stevenson, 3 Ben., 119; The Nuestra Senora, 108 U. S., 92.

(*p*) *Capture on river 130 miles from mouth.*—A capture on the Roanoke River 130 miles from its mouth is not maritime prize.

(*p*) The Cotton Plant, 10 Wall., 577.

(*q*) *Property destroyed by Army and Navy in cooperation.*—Prize money or bounty in lieu thereof is not allowed by the laws of Congress where vessels of the enemy are captured or destroyed by the Navy and Army in cooperation.

(*q*) The Siren, 13 Wall., 389; Porter *v.* U. S., 106 U. S., 607.

(*r*) *Coin may be prize.*

(*r*) The Wando, 1 Lowell, 18.

(*s*) *Cotton abandoned* by the enemy or blockade runner and taken by a cruiser may be prize.

(*s*) Bales of Cotton, id., 11.

(t) The Sally Magee, 3 Wall., 634.

(t) *Vessel liable to confiscation.*—If the vessel is liable to confiscation, the cargo is presumed to be so also.

(u) The Salvor, 4 Phila., 409.

(u) *Persons found on captured vessel.*—Persons found on the captured vessel, though subject to the court's control for the purpose of examination, do not pass into judicial custody with the vessel and cargo.

(v) The Siren, 1 Lowell, 280.

(v) *Prize or no prize, subject of.*—The statute of 1864 did not exhaust the subject of prize or no prize. There may still be captures which go to the United States only, and not to the captors; and there may be prize without captors.

(w) The Hampton, 5 Wall., 376; The Sally, 8 Cranch, 382.

(w) *Municipal forfeiture.*—A statute creating a municipal forfeiture does not override or displace the law of prize.

(x) L'Invincible, 1 Wheat., 238.

(x) *Exclusive cognizance of prize questions.*—The capturing power has in general the exclusive cognizance of prize questions.

(y) Cushing v. U. S., 22 C. Cls. R., 1.

(y) *Condemnations by prize courts.*—Condemnations by prize courts, being final in actions between individuals and as to the condemned vessels, give to purchasers a good title against all the world, but they do not bind foreign nations or bar claims which are valid by international law.

(z) The Estrella, 4 Wheat., 298; The Santissima Trinidad, 7 id., 283.

(z) *Rights of inquiry of neutral powers.*—A neutral power may inquire whether its neutrality has been violated.

(aa) The City of Mexico, 28 F. R., 148; The Ambrose Light, 25 id., 408; The Nuestra Senora, 4 Wheat., 497; Pr. Cas., 2 Black., 635.

(aa) *Libel in prize—in case of piracy.*—To sustain a libel in prize, a state of war must exist; in a case of piracy, the pirate is presumed to have declared universal war.

(bb) 9 A. G. Op., 455.

(bb) *Ascertaining nationality of a vessel.*—Any measures which the commander of an armed vessel may take to ascertain the nationality of another vessel, beyond firing a blank shot, or, in case of delay, a shot across the latter's bows, is at his own peril.

(cc) The Deer, 1 Lowell, 95.

(cc) *Salvage.*—Salvage may be given in lieu of prize to persons not of the Navy.

(dd) U. S. v. Bales of Cotton, Woolw., 236, 245.

(dd) *Irregularities corrected.*—Irregularities in prize cases may be readily corrected.

(ee) U. S. v. Stevenson, 3 Ben., 119.

(ee) *Seizure of property on land.*—The law of nations does not authorize the seizure of enemy's property as prize of war on land. Such a seizure must be upheld by the municipal laws of the nation seeking to enforce the forfeiture.

(ff) Rev. Stat., s. 4618; The Sir Wm. Peel, 5 Wall., 517; The Georgia, 7 id., 32; The Dos Hermanos, 2 Wheat., 76; The Pizarro, id., 227; The Amiable Isabella, 6 id., 1.

(ff) *Proofs to warrant condemnation.*—Usually a case in prize will not be heard on further proofs than such as come from the ship, unless upon this evidence the case is not sufficiently clear to warrant condemnation or restitution.

(gg) Hooper v. U. S., 22 C. Cls. R., 408.

(gg) *Burden of proof.*—In prize proceedings the burden of proof is on the vessel.

(hh) The Sally Magee, 3 Wall., 451.

(hh) *Cases usually heard on the papers.*—Cases of prize are usually heard, in the first instance, upon the papers found on board the vessel, and the examinations taken in preparatorio.

(*ii*) *Verification of ship's papers and examination of crew.*—The ship's papers should be brought into court and verified on oath by the captors, and the examination of the captured crew should be taken upon the standing interrogatories, and not viva voce, in open court. Nor should the captured crew be permitted to be reexamined in court, for they are bound to declare the whole truth upon their first examination.

(*ii*) The Pizarro, 2 Wheat., 227.

(*jj*) *Act showing intention to seize.*—Some act should be done showing an intention to seize and retain as prize in order to constitute a capture; but it is sufficient if such intention is fairly to be inferred from the conduct of the captor.

(*jj*) The Grotius, 9 Cranch, 368.

(*kk*) *Capture by noncommissioned captor—false claim, etc.*—Whenever a capture is made by a noncommissioned captor, the Government may, after a decree of condemnation and before the distribution of the prize proceeds, contest the rights of the captor, and the condemnation must be to the Government. It rests on the claimant to prove that his interest is neutral, according to the rules of the prize courts, and if it is not established beyond a reasonable doubt condemnation follows. The assertion of a false claim, in whole or in part, by an agent, or in connivance with the real owner, is a substantive cause of condemnation.

(*kk*) The Amiable Isabella, 6 Wheat., 1.

(*ll*) *Ownership of property seized.*—When a vessel is liable to confiscation, the first presumption is that the cargo is also, and ownership thus presumptively in the enemy is not disproved by a test affidavit couched in general terms of denial and unsupported by other affirmative evidence. The ownership of property belonging to the enemy can not be changed while it is in transitu. The capture clothes the captors with all the rights of the owner which subsisted at the commencement of the voyage, and anything done thereafter designed to incumber the property or change its ownership is a nullity.

(*ll*) The Sally Magee, 3 Wall., 451.

(*mm*) *What a libel in prize must allege.*—The rule is that a libel in prize must allege generally the fact of capture as prize of war. It need not allege the particular cause for which the vessel has been seized.

(*mm*) The Andromeda, 2 Wall., 481.

(*nn*) *The fact of capture gives jurisdiction.*—The filing of the libel is not necessary to give jurisdiction to a court of admiralty over a vessel captured de jure belli. The fact of the capture gives jurisdiction. Property arrested as prize is not attachable at the suit of private parties, and if they have any claims against it they must present them to the court of prize.

(*nn*) The Nassau, 4 Wall., 634.

(*oo*) *Decree of inferior court.*—The decree of an inferior court will not necessarily be reversed because in its discretion it has allowed an invocation to be made on the first or original hearing, such invocation not being regularly made on the first hearing, but only after a cause has been fully heard on the ship's documents and the preparatory proofs, and where suspicious circumstances appear therefrom.

(*oo*) The Springbok, 5 Wall., 1.

(*pp*) *Mortgage on vessel or cargo held by innocent party.*—A mortgage on a vessel or cargo held by an innocent party

(*pp*) The Hampton, 5 Wall., 374.

is not a jus in re so as to be protected by the law of nations in a prize court. It is a mere lien, and simply security for the debt for which it is given.

(qq) The Watchful, 6 Wall., 91.

(qq) *No case made out, but suspicious circumstances.*—Where no case of prize was made out by the evidence, but there were other suspicious circumstances showing a prima facie case of violation of the navigation laws, and probably of the revenue laws also, the court held that the proper practice was to dismiss the libel and to remand the case to the court below for an amendment of the libel, or for such other proceedings as the Government might, under all the circumstances, see fit to adopt.

(rr) The Georgia, 7 Wall., 32.

(rr) *Further proofs.*—Where both parties have taken further proofs without objection, the inference is that there must have been an order for the same, or else that the depositions were taken by mutual consent, and the court of appeals will not entertain a motion that all the depositions except those in preparatorio should be stricken out or disregarded because it does not appear that any order has been granted on behalf of either party to take further proofs.

(ss) Swan v. U. S., 19 C. Cls. R., 51.

(ss) *Distribution.*—The word "distribution" refers to two things: First, a division of the prize money between two or more vessels making or aiding in the capture, or between the capturing vessel or vessels and the United States; second, a division among the fleet officers and the officers and crew of a capturing vessel of the prize money awarded to her by judicial decree. The former must be decreed by a prize court, the latter by the Treasury and Navy Departments.

(tt) The Nassau, 4 Wall., 634; The Andromeda, 2 id.

(tt) *Demands against property captured.*—Demands against property captured as prize of war can be adjudged only in a prize court.

(uu) Rev. Stat., s. 4652; The Adeline, 9 Cranch, 244; The Star, 3 Wheat., 78; The Ann Green, 1 Gall., 274, 289.

(uu) *Recapture—salvage.*—Cases of recapture are cases of prize. Salvage is an incident to the question of prize, and American property recaptured may be restored on payment of salvage.

(vv) The Star, supra.

(vv) *Sentence of condemnation extinguishes title.*—By the general maritime law a sentence of condemnation completely extinguished the title of the original owner, and where property was recaptured after a sentence of condemnation had been passed upon it the original owner was held not entitled to restitution on the payment of salvage.

(ww) Rev. Stat., s. 4624; The Atlanta, 3 Wall., 25; The Selma, 1 Lowell, 30; 1 A.G. Op., 594; 11 id., 9, 147.

(ww) *Vessels making capture.*—The vessels making the capture may include not only those doing damage by their fire, but also those which are near at hand, and by diverting the enemy's fire, etc., hasten the surrender.

(xx) The Sally, 8 Cranch, 382; The Hampton, 5 Wall., 372, 376.

(xx) *Forfeiture, etc.*—Neither the act of July 13, 1861, providing for the forfeiture of vessels and cargoes in certain cases, nor the act of March 3, 1863, to protect the liens upon vessels in certain cases, refers to captures jure belli; and neither affects the law of prize. "The case of The Sally is a direct decision of this court that a statute creating a municipal forfeiture does not override or displace the law of prize."

(*yy*) *Title, etc.*—No title can be derived but from the prize acts, and seizures made jure belli by noncommissioned captors are made for the Government. The noncommissioned captor can proceed in a prize court only as for salvage, the amount of which lies in the discretion of the court, and unless there is a very clear case of mistake in the exercise of this discretion the appellate court will not interfere.

(*yy*) The Dos Hermanos, 10 Wheat., 306.

(*zz*) *Commanders of divisions and fleet captains.*—By the statute cited, repealing all acts inconsistent therewith, paragraphs 1 and 2 of this section are to apply to commanders of divisions and fleet captains from April, 1861 (the commencement of the late war), and the shares shall be paid in the manner as provided for division commanders in said paragraph 2, said payments to be made out of the naval pension fund.

(*zz*) Rev. Stat., s. 4631; 14 A. G. Op., 150, 524; 11 id., 326, 519; act June 8, 1874, ch. 256; 18 Stat. L., 63.

(*aaa*) "*Commander of a single ship.*"—In the reenactment of the fourth rule the words "commander of a single vessel" are here substituted for "commander of a single ship."

(*aaa*) U. S. *v.* Steever, 113 U. S., 753.

(*bbb*) *Law regulating distribution of prize money.*—The law regulating the distribution of prize money among naval captors is a conditional grant by Congress which becomes absolute as soon as the conditions are fulfilled.

(*bbb*) 11 A. G. Op., 94, 102, 147, 148.

(*ccc*) *Proceeds of captured property.*—Apart from such express grant, the proceeds of property captured as prize of war belong exclusively to the Government.

(*ccc*) The Merrimac, Blatch. Pr. Cas., 584.

(*ddd*) *Torpedo steam launch is a "ship."*—A torpedo steam launch is a "ship" within the meaning of this act, and under the last clause of rule 5 prize money is to be distributed among the subordinate officers and crew of a ship according to their pay at the time of the capture, unaffected by subsequent promotion as of that time.

(*ddd*) U. S. *v.* Steever, supra; 14 A. G. Op., 150, 365; 15 id., 64; Swan *v.* U. S., 19 C. Cls. R., 51.

(*hhh*) *Officer absent when capture is made.*—An officer absent on leave is not entitled to share in prizes captured during his absence.

(*hhh*) 11 A. G. Op., 327.

(*iii*) *Rights of individual captors.*—The rights of individual captors become fixed at the moment of capture. The promotion of an officer after capture and before distribution, though his commission takes effect from the date of capture, does not affect his share of the prize money.

(*iii*) Swan *v.* U. S., supra.

(*jjj*) *When entitled to only one-half the prize money.*—Where a captured vessel, which was of superior force to either of two vessels she proceeded to attack, but of inferior force to the two combined, fired on one, but was forced to surrender by the destructive fire of the other at the second shot, the capturing force was held to be of superior strength, as both vessels must be counted, and consequently that they were entitled to only one-half the prize money.

(*jjj*) The Atlanta, 3 Wall., 425.

(*kkk*) *Libel in prize.*—A state of war must exist to sustain a libel in prize.

(*kkk*) 11 A. G. Op., 114; The City of Mexico, 28 F. R., 148.

(*lll*) *Piratical aggression.*—A vessel captured for piratical agression becomes a prize on account of the universal war presumed to have been declared by the pirate against commerce and human kind. There must be some overt act; intent is not sufficient.

(*lll*)

Rev. Stat. s. 1400; act Jan. 20, 1881, ch. 24; Stat. L., 317.

**Professors of mathematics.**—They must pass a physical and professional examination before appointment.

(a) Rev. Stat., s. 1480; 19 Stat. L., 242; 17 Stat. L., 192.

(a) *Relative rank of.*—Professors of mathematics shall have relative rank as follows: Three, the relative rank of captain; four, that of commander; and five, that of lieutenant-commander or lieutenant.

The grades established in the six preceding sections for the staff corps of the Navy shall be filled by appointment from the highest members in each corps, according to seniority; and new commissions shall be issued to the officers so appointed, in which the titles and grades established in said sections shall be inserted; and no existing commission shall be vacated in the said several staff corps, except by the issue of the new commissions required by the provisions of this section; and no officer shall be reduced in rank or lose seniority in his own corps by any change which may be required under the provisions of the said six preceding sections: *Provided*, That the issuing of a new appointment and commission to any officer of the Pay Corps under the provisions of this section shall not affect or annul any existing bond, but the same shall remain in force, and apply to such new appointment and commission.

16 A. G. Op., 414; see also Rev. Stat., s. 1475.

**Form of commission.**—A commission to D., "a pay inspector from the —— day of ——, A. D. 187—, with the relative rank of commander," gives the appropriate title and grade of the officer it names, and satisfies this section.

Rev. Stat., s. 1460, Aug. 15, 1876; 17 A. G. Op., p. 495; ss. 1460, 1461 were repealed by the act of Aug. 5, 1882.

**Promotion while on retired list.**—Attorney-General Brewster, in expressing an official opinion on the scope and meaning of the section cited, says: "An officer who was retired as a commodore, and has since been promoted to the grade of rear-admiral on the retired list, under the act cited, is not entitled to any increase of pay by reason of his promotion."

Act June 22, 1874, ch. 392.

Act June 15, 1870, ch. 295, s. 7.

The first section of the act cited is in pari materia with the provision touching the pay of promoted officers contained in the second, third, and fourth citations, and was designed to fix the commencement of the increased pay of promoted officers in active service only.

Rev. Stat., s. 1591.

The statute here cited, which declares that an officer promoted on the retired list shall not, in consequence of such promotion, be entitled to increase of pay, is applicable alike to officers promoted under section 1461, Revised Statutes, and to those promoted under section 1460, as amended.

By act of August 5, 1882, it was, however, provided that thereafter there should be "no promotion or increase of pay in the retired list of the Navy."

Rev. Stat., s. 1444; 18 A. G. Op., 393, Garland, May 4, 1886; Vinton's Case, 2 Sumner, 299; 4 Op., 124.

**Promotion.**—February 18, 1886, E., a rear-admiral, was, under the section cited, transferred from the active to the retired list of the Navy, and T., a commodore (being first in the line of promotion), was, after having successfully passed an examination, nominated by the President to be a rear-admiral to fill the vacancy caused by the retirement of E. While this nomination was before the Senate

awaiting action thereon, T. attained the age of 62 years. and under the section cited was transferred from the active to the retired list to rank as commodore: *Advised*, That, according to the law and usage of the service, T. was entitled to be rear-admiral from 18th of February, 1886, by relation, and to receive the pay of a rear-admiral from that date, and, if the Senate should confirm his nomination, might be commissioned as a rear-admiral and placed on the retired list as of that grade.

**Promotion, examination for.**—By the statute cited in examination for promotion in the Navy no fact decided at a previous examination is to be inquired into, unless such fact continuing shows the unfitness of the officer to perform all his duties at sea; and where this rule has been violated the President may order a reexamination. This act does not authorize the President and Senate to place officers on the retired or active list, or repeal the laws limiting the active force of the Navy. As a general act, it was intended to regulate appeals for special legislation on the subject, substituting a judicial inquiry in the department for investigations by its committee.

Rev. Stat., s. 1493; 20 Stat. L., 165, ch. 267; Thompson v. U. S., 18 C. Cls. R., 604.

(*a*) By the statute of June 22, 1874, a Navy officer promoted in course has the pay of the grade to which he is promoted from the date he takes rank therein, if subsequent to the vacancy he is appointed to fill. This cuts off increase of pay until promotion.

(*a*) Rev. Stat., s. 1495; 18 Stat. L., 191; Hunt v. U. S., 116 U. S., 396; Adamson v. U. S., 19 C. Cls. R., 623.

**Promotion, officers rejected from.**—"When the case of any officer has been acted upon by a board of naval surgeons and an examining board for promotion * * * and he shall not have been recommended for promotion by both of the said boards, he shall be placed upon the retired list."

Rev. Stat., s. 1447.

(*a*) *Proceedings without notice.*—If, upon proceedings taken by a naval board without notice to the officer interested, its findings are approved by the President and the officer is retired, the order of retirement may be revoked and the officer allowed a hearing so long as the vacancy in the office remains unfilled.

(*a*) 16 A.G. Op., 20.

(*b*) *Right to be present.*—"Any officer whose case is to be acted upon by such examining board shall have the right to be present, if he so desires, and to submit a statement of his case on oath."

(*b*) Rev. Stat., s. 1500.

(*c*) *Same as in the Army.*—"Act to provide for the examination of certain officers of the Marine Corps, and to regulate promotion therein."

(*c*) 27 Stat. L., 321; act July 28, 1892.

**Promotion and pay.**—By the statutes cited a Navy officer promoted in course has the pay of the grade to which he is promoted from the date he takes rank therein, if subsequent to the vacancy he is appointed to fill. This cuts off increase of pay until promotion.

Rev. Stat., ss. 1495, 1507; 18 Stat. L., 191; Hunt v. U. S., 116 U.S., 396; Adamson v. U. S., 19 C. Cls. R., 623.

**Publications for official use.**—The head of a Department has no right under the section cited to make a requisition on the Public Printer for a greater number of copies of publications other than "bills and resolutions" than the

Act Jan. 12, 1895, s. 90; 21 A. G. Op., 370, Conrad Actg. A. G., June 22, 1896.

number of bureaus in the Department and divisions in the office of the head thereof.

If he makes the requisition under the general authority vested in his Department, and with the understanding that the cost is to be charged against the printing appropriation for his Department, he has the right to make such requisition, and the Public Printer has no authority to pass upon the character of publications which he may deem essential for carrying out the work of his Department.

Rev. Stat., s. 1378; 6 A. G. Op., 357.

**Pursers.**—In the absence of a duly appointed purser the commander of a naval squadron on a foreign station may appoint an acting purser.

(a) A. G. Op., 346; Goldsborough v. U. S., Taney, 80.

(a) A purser's pay stops when his resignation is accepted, although the office may be kept alive for settlement.

(b) U. S. v. Buchanan, 8 How., 83; Crubbe, 563; Carpenter v. U. S., 15 C. Cls. R., 247.

(b) Pursers are not allowed extra pay for any official duty.

(c) U. S. v. White, Taney, 152.

(c) Navy agents are not allowed extra compensation.

(d) U. S. v. Mouat, 124 U. S., 303, 308; 22 C. Cls. R., 293.

(d) Under section 1378 the Pay Corps is limited to officers commissioned by the President, and clerks and others not so commissioned do not belong to the Pay Corps.

(e) Rev. Stat., s. 1381; Ostrander v. U. S., 22 C. Cls. R., 218.

(e) The appointment of a suitable person to act as purser ends when a regularly appointed paymaster reports for duty, and without discharge or revocation.

(f) Rev. Stat., s. 1383; U. S. v. Tingey, 5 Pet., 115; Strong v. U. S., 6 Wal., 788; U. S. v. Buchanan, 8 How., 83.

(f) A purser's bond to the Government, even when not prescribed by law, is valid as a common-law obligation, and if his duties are not defined by statute and are regulated by usages or the orders of the Department, these should be pleaded in a suit for breach of the bond.

(g) Rev. Stat., s. 1389; 1 A. G. Op., 302; 4 A. G. Op., 351; U. S. v. Hawkins, 10 Pet., 125; U. S. v. Cullis, 2 Curtis, 617; U. S. v. Wendell, 2 Clif., 340.

(g) The offices of Navy agent and of Navy pension agent are not created by law, nor are their duties defined by law, but the former and pursers are both disbursing officers whose accounts are kept separately at the Treasury Department.

Rev. Stat., s. 1579; Herbert v. U. S., 21 C. Cls. R., 53; Button v. U. S., 20 C. Cls. R., 423.

**Rations.**—An apothecary in the Navy doing detail duty at the marine barracks is not entitled to a daily ration under the section cited. But petty officers and seamen attached to and doing duty on shipboard, though not upon a seagoing vessel, are included in the words "ordinary of a navy-yard," and are entitled to a ration. The section does not authorize a ration for the apothecary of the Naval Academy when engaged on shore duty.

(a) 23 Stat. L., 291; act Jan. 30, 1885.

(a) *Cadets, boys, and men entitled to rations.*—The statute cited contains the following proviso: "That all enlisted men and boys in the Navy, attached to any United States vessel or station and doing duty thereon, and naval cadets, shall be allowed a ration, or commutation thereof in money, under such limitations and regulations as the Secretary of the Navy may prescribe."

**Rank.**—Secretary of the Navy may adopt a rule to regulate the relative rank of Navy officers, and afterwards rescind it and adopt another, and the civil courts can not interfere therein by mandamus.

22 Stat. L., 472; act Mar. 3, 1883, ch. 97; U. S. *v.* Whitney, 5 Mackey, 370; see Gould and Tucker's Notes on U.S. Stats., p. 47, note on s. 416; see Gould and Tucker's Notes, p. 421, note on s. 1521.

Statute of March 3, 1883, chapter 97, appropriates for nine hundred masters, the title of which grade is hereby changed to that of lieutenants, and the masters now on the list shall constitute a junior grade of, and be commissioned as, lieutenants, having the same rank and pay as now provided by law for masters, but promotion to and from said grade shall be by examination, as provided by law for promotion to and from the grade of masters; and nothing herein contained shall be so construed as to increase the pay now allowed by law to any officer in the line or staff.

**Recommendation of Retiring Board.**—The cited section 4 of the statute of 1862 did not authorize the appointment of an examining board to recommend the retirement or promotion of naval medical officers.

Rev. Stat., s. 1504; act July 16, 1862, s. 4; 11 A.G. Op., 105.

**Reenlistment.**—Under the statute cited service in the Navy can not be counted, and a man can not be reenlisted as a private unless he has already served as such in the Army for twenty years.

Act Feb. 27, 1893, ch. 168; 27 Stat. L., 478, Olney, Nov. 23, 1893.

**Reexamination.**—President may order reexamination where the rule that no fact decided at a previous examination shall be inquired into, unless such fact continuing shows the unfitness of the officer to perform all his duties at sea has been violated.

Rev. Stat., s. 1493; case of Thompson *v.* U. S., 18 C. Cls. R., 604.

**Regulations.**—"The orders, regulations, and instructions issued by the Secretary of the Navy prior to July 14, 1862, with such alterations as he may since have adopted, with the approval of the President, shall be recognized as the regulations of the Navy, subject to alterations adopted in the same manner."

Rev. Stat., s. 1547; act July 14, 1862, ch. 164; 12 Stat. L., 565.

(*a*) The following words at the end of the original act, cited in the margin, "*Provided*, That no order, regulation, or instruction contrary to any act of Congress is hereby recognized as valid," were omitted in the revision. These orders, etc., must conform to the law, if a law exists upon the subject, not covered by statute; the Secretary can not change the character of an officer's service from sea service to shore service by ordering that it be so regarded."

(*a*) Symond's Case, 21 C. Cls. R., 148, 494; 120 U. S., 46. See 6 A. G. Op., 10; id., 9.

(*b*) The Army and Navy regulations have the force of law; but only with respect to a person or subject-matter over which the Secretary has official control.

(*b*) Gratiot *v.* U. S., 4 How., 117; U. S. *v.* Maurice, 2 Brock., 105; Smith *v.* Whitney, 116 U. S., 180; J. Adv. Gen. Op., 116; 16 A. G. Op., 497; 2 id., 209.

(*c*) The Navy Regulations concerning balances due deceased seamen and marines, wills of persons in actual service, payment of arrearages under wills, etc., govern only those in the naval service, and do not bind the accounting officers of the Treasury in the settlement of naval accounts.

(*c*) 16 A. G. Op., 494.

Rev. Stat., s. 1500; 16 A. G. Op., 20.

**Rehearing.**—An officer retired by a board without being duly notified after he has had permission to be absent at home until notified may be given a rehearing by the President.

18 A. G. Op., 395, Garland, May 14, 1886.

**Reinstatement.**—Cases of Robert B. Higgins, Clarence H. Matthews, and William B. Day, for reinstatement.

Mr. Higgins had been illegally deposed from performance of the duties and from an enjoyment of the emoluments of the office of cadet engineer, and he accepted the office of second assistant engineer in the Revenue Marine. Notwithstanding the two offices are incompatible, and that the general rule is that the acceptance of a second incompatible office operates as a resignation of the first, the acceptance of the second office was not inconsistent with an intent on Mr. Higgins's part to resume the exercise of the office of cadet engineer as soon as he might be recognized as such: *Held*, that in view of all the facts, what he has done does not amount to a resignation or abandonment of the office of cadet engineer, that he still holds it, and should be reinstated in the actual enjoyment and occupation of it.

U. S. v. Redgrave, 116 U. S., 474; Leopold v. U. S., 18 C. Cls. R., 557; Perkins v. U. S., 116 U. S., 483.

In the cases of Matthews and Day, who were dropped from the roll, it was held that the action was illegal; that the order was void; that they were still in the service, and entitled to reinstatement upon the roll of the Navy.

20 A. G. Op., 631, Maxwell, Acting A. G., Aug. 4, 1893.

**Remission of penalty.**—Where a contract for the construction of a vessel for the Government contains a clause imposing a penalty for each day's delay beyond a stipulated time for finishing the vessel, and further provides that any question as to liability for the infliction of said penalty should be referred to the Secretary of the Navy for decision, and provides that his decision shall be conclusive upon all parties to the contract, it is not proper for a subsequent Secretary of the Navy to remit the amount of penalties imposed by his predecessor and pay that sum to the contractor.

22 Stat. L., 291, 476.

**Repairs**, provision for, on existing vessels of war.

Rev. Stat., s. 429; act May 1, 1820; 1 Com. D., 237.

**Reports to Congress by Secretary of the Navy.**—Clause 1 of the section cited is abbreviated and modified from the cited act, the part of which relating to the Secretary of War is stated in the revision in connection with his Department.

(*a*) In clause 3 the word "showing," in first line, is here added, and the words "and showing," in the fifth line, are here substituted for "a statement" in the original act.

(*b*) 20 Stat. L., 167, ch. 311; 21 Stat. L., 381, ch. 73.

(*b*) *Tabular statement of receipts.*—The Secretary of the Treasury is required to transmit to Congress annually a tabular statement of the receipts and expenditures in the naval service under each appropriation, together with an account of balances in the hands of disbursing agents and a report of any amounts lost or unaccounted for by voucher.

21 A. G. Op., 120, Olney, Jan. 19, 1895.

**Reservation, naval, restoration to public domain.**—Congress alone is competent to subject to general governmental uses land heretofore reserved from the public domain for the use of the Navy Department.

**Resignation of naval cadets.**—"Where a naval cadet tendered his resignation, and it was accepted by the Secretary of the Navy and the cadet duly notified thereof, but in a short time (about two weeks) afterwards the cadet made application to withdraw his resignation, which was granted by the Secretary, who at the same time instructed him to report to the Superintendent of the Academy: *Held*, that by the resignation and its acceptance the relations of the cadet with the Naval Academy were completely severed and his position there became vacant; that he could not be reinstated otherwise than by an appointment in conformity to the sections cited; and that the secretary in permitting the withdrawal of the resignation after its acceptance had no legal effect whatever.

Rev. Stat., ss. 1514, 1515; 19 A. G. Op., 350, Miller, July 8, 1889; Mimmac v. U. S., 97 U. S., 436, 437; U. S. v. Corson, 114 U. S., 619.

**Retired officers.**—The retired list in the Navy is filled from the active list. The lowest rank of the active list is filled from without, and all the higher grades are filled by promotion.

Rev. Stat., s. 1443; Thompson v. U. S., 18 C. Cls. R., 604; Thornley v. U. S., id., 111; 113 U. S., 310; Brown v. U. S., id., 568; 18 C. Cls. R., 537.

(*a*) *Longevity pay.*—Officers on the retired list are not entitled to longevity pay.

(*a*) Id.

(*b*) *Mate, how paid.*—A mate appointed by private act upon the retired list of the Navy with the rank of master is to be paid as if retired from the rank of master.

(*b*) Bradbury v. U. S., 20 C. Cls. R., 187.

(*c*) *Actual time.*—The act of March 3, 1883, chapter 97, makes the provision that "all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further*, That nothing herein contained shall be so construed as to give any additional pay to such officer during the time of his service in the Volunteer Army or Navy."

(*c*) 22 Stat. L., 473.

(*d*) *Graduated pay.*—Under this act Navy officers are to be credited as of the lowest grade with graduated pay held by them after reentering the service.

(*d*) U. S. v. Rockwell, 120 U. S., 60; 21 C. Cls. R., 332.

(*e*) *Service in Marine Corps.*—Service in the Marine Corps is service in the Army or Navy within the act of March 3, 1883.

(*e*) U. S. v. Dunn, 120 U. S., 249; 21 C. Cls. R., 20.

(*f*) *Extra compensation to.*—If a retired officer is designated by Congress to perform services which could not be required of him, such as the superintendence of the erection of a public building, he may receive extra compensation therefor.

(*f*) Meigs v. U. S., 19 C. Cls. R., 497.

(*g*) *Compensation of, line or staff.*—The sections cited take the place of all provisions in force at the adoption of the Revised Statutes.

(*g*) Rev. Stat., ss. 1588, 1593.

(h) Thornley v. U. S., 113 U. S., 310; 18 C. Cls. R., 111; Brown v. U. S., 113 U. S., 568; 18 C. Cls. R., 537.

(h) *Officers on retired list, longevity.*—Naval officers, when on the retired list, whether commissioned or warrant, are not entitled to increase of pay by reason of longevity.

(i) McClure v. U.S., 18 C.Cls.R., 347. See Thompson v. U. S., id., 604; Rutherford v. U. S., id., 339; Magaw v. U. S., 16 id., 3.

(i) *Retired in first five years of service.*—A lieutenant of the Navy, retired in the first five years of service because not recommended for promotion, is entitled to only one-half his sea pay at the time of retirement, under the last clause of section 1588.

(j) Rev. Stat., s. 1588; Rev. Stat., s. 1593; Brown v. U. S., 113 U. S., 568; 16 A. G. Op., 22.

(j) *Furlough pay.*—The section cited does not apply to officers retired on furlough pay. An officer retired on furlough pay is to be paid according to the provisions of section 1593.

Rev. Stat., s. 1593; id.; 15 A.G. Op., 316.

(k) Rev. Stat., s. 1588; Magaw v. U. S., 16 C. Cls. R., 3.

(k) *Rate of pay*, retired officers, fixed by section cited.

(l) Rev. Stat. s. 1592.

(l) *Longevity.*—Officers on the retired list are not entitled to increase of pay by reason of longevity.

(m) Rev. Stat., s. 1592; Thornley v. U. S., 16 C. Cls. R., 3.

(m) *Five years' service.*—The periods of five years' service contemplated by the section cited for increase of pay are grades within section 1588.

(n) Rutherford v. U. S., 18 C. Cls. R., 339.

(n) *Grades.*—The term "grade" refers to the divisions of officers into five-years' periods of service.

(o) Supra.

(o) *Chief engineer*, retired in the third period of five years' service, etc.

(p) U. S. v. Burchard, 125 U. S., 176; 19 C. Cls. R., 137; Potts v. U. S., 125 U. S., 173.

(p) *Two classes, line between.*—The cause of incapacity marks the line between the two classes of retired officers referred to in section 1588, those whose incapacity was caused by the service being entitled to three-fourths of their sea pay and those whose incapacity was not so caused to one-half such pay.

(q) Rev. Stat., s. 1594; Brown v. U. S., 113 U. S., 568; 16 A.G.Op., 22; 18 Stat. L., 304, ch. 80.

(q) *Difference of pay to certain officers.*—The statute (18 Stat. L.) cited allows difference of pay to certain officers of the Navy, who were dropped, furloughed, or retired under the statute of February 28, 1855, and afterwards promoted and restored. The causes of the retirement of a naval officer, transferred under this section from the furlough list to the retired pay list, determine his rate of pay under section 1588; and an officer retired on furlough pay from causes not incident to the service can not be transferred to the 75 per cent retired pay list thereby provided by action of the Executive.

(r) Rev. Stat., s. 1594; U. S. v. Burchard, 125 U. S., 176; 19 C. Cls. R., 137.

(r) *Construed liberally.*—The section cited is construed liberally, and authorizes a transfer as of the time of placing an officer on the furlough list.

Rev. Stat., ss. 1448, 1455; act Aug. 3, 1861; Stat. L., vol. 12, 291.

**Retiring board.**—What officers may be retired and the modus operandi thereof.

(a) Brown v. U. S., 18 C. Cls. R., 537.

(a) *Warrant officers.*—The statutes apply to warrant officers, and they, as well as commissioned officers, may be retired.

(b) Rev. Stat., s. 1449; act Aug. 3, 1861; 10 A. G. Op., 129.

(b) *Marine Corps.*—The Secretary of the Navy has discretionary power to select for the trial of officers of the Marine Corps such commissioned officers under his control and orders as he deems proper.

(c) *Retiring boards.*—Composition of retiring board and how ordered. (c) Rev. Stat., s. 1246.

(d) *Must report cause of incapacity.*—When said retiring board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, produced his incapacity and whether such cause is an incident of the service. (d) Rev. Stat., s. 1451.

(e) *Subsequent reconsideration.*—If a naval retiring board, convened to inquire into the nature and cause of an officer's disability, has completed its work, rendered a perfect judgment, and adjourned, a subsequent reconsideration of the judgment, unless directed or authorized by competent authority, is without legal effect. (e) Rodney's Case, 16 A. G. Op., 104.

(f) *Finding of a board.*—The finding of the board, when approved by the President, settled the fact as to the cause of an officer's incapacity. It is conclusive and can not be reviewed by the Secretary of the Navy. (f) Burchard v. U. S., 125 U. S., 176; 19 C. Cls. R., 137.

(g) *Marine Corps.*—This does not apply to the officers of the Marine Corps. (g) Rev. Stat., s. 1454; 15 A. G. Op., 445. See note to s. 1451; Magaw v. U. S., 16 C. Cls. R., 3.

**Salary, rear-admiral, not bound to accept.**—A rear-admiral appointed to the office of Chief of the Bureau of Yards and Docks is not bound to accept the salary provided therefor, but may demand that allowed him for performing shore duty. 10 A. G. Op., 377.

**Sealing vessels, seizure of.**—A naval officer to whom delivery is made of a vessel seized under the provisions of the treaty has no authority to investigate the seizure or release the vessel. 21 (part 2) A. G. Op., 234, Harmon, Oct. 3, 1895.

**Seamen, deposit of the savings of.**—The act of February 9, 1889, chapter 119, "to provide for the deposit of the savings of seamen of the United States Navy," does not extend to enlisted men of the Marine Corps. 19 Op., 616.

(a) *Amount of savings not limited.*—The act to provide for the deposit of the savings of seamen of the United States Navy, approved February 9, 1889 (25 Stat., 657), does not in terms, or by necessary implication, limit the amount which may be deposited to savings earned during any single period of time. "The paymaster of the United States steamship *San Francisco* may receive from the chief boatswain's mate the sum of $900 as a deposit under the provisions of the act referred to, provided the $900 represents the 'savings' earned by the petty officer, as an enlisted man, or petty officer, in the United States Navy." (a) Op. of Attorney-General Feb. 24, 1897.

**Sea service and pay,** as affecting volunteer officers transferred to the Regular Navy. Rev. Stat., s. 1412; 14 A. G. Op., 142.

(a) *All other officers.*—Under section 1556 sea pay is due for active service on a training ship stationed offshore, although the Navy Department may have decided otherwise. (See note, section 1571.) Under section 3 of the act of June 1, 1860, which provided that no service shall be regarded as sea service but such as shall be performed at sea, under the orders of a Department, and in vessels (a) U. S. v. Symonds, 120 U. S., 46; 21 C. Cls. R., 248; U. S. v. Bishop, 120 U. S. 51; 21 C. Cls. R., 215.

employed by authority of law, the service which entitled an officer to the pay allowed for "duty at sea" began when, having been ordered to a particular duty, he reported at the place designated and entered upon that duty. Even though the vessel lay in port. the pay allowed by that act to officers on duty at sea commenced.

10 A. G. Op., 191; U. S. v. Strong, 125 U. S., 656; 23 C. Cls. R., 10; McRitchie's Case, id., 23.

(b) Rev. Stat., ss. 1556, 1571; Symonds v. U. S., 120 U. S., 46; 21 C. Cls. R., 148; Bishop v. U. S., 120 U. S., 51; 21 C. Cls. R., 215; Emory v. U. S., 19 C. Cls. R., 254; Barker v. U. S., id., 288; Carpenter v. U. S., 15 C. Cls. R., 247.

(b) *"At sea" defined.*—The words "at sea," in sections 1556 and 1571, mean not out of sight of land, but upon the waters of the sea, and sea service may include service upon a training ship at anchor in an arm of the sea.

(c) See "At sea," defined above.

(c) *Temporary duty on a vessel at anchor near shore not sea duty.*—A naval paymaster on shore duty at a navy-yard, having charge of the accounts of certain ironclads temporarily at anchor off the yard and in commission for sea service, was held not entitled to sea-duty pay.

(d) See "Shore duty," 22 Stat. L., 481.

(d) *Shore duty* not allowed except upon order of the Secretary of the Navy.

(e) Rev. Stat., s. 1588; McClure v. U. S., 18 C. Cls. R., 347, and see "Pay and allowances" and "Longevity."

(e) *Retired in first five years of service.*—A lieutenant retired in the first five years of service because not recommended for promotion is entitled to only one-half his sea pay at the time of retirement, under the last clause of section 1588.

(f) Rutherford v. U. S., 18 C. Cls. R., 339.

(f) *Sea pay, chief engineers.*—A chief engineer retired in the third period of five years' service is entitled to 75 per cent of the sea pay of that grade, and not to the highest pay of a chief engineer who has served over twenty years.

Rev. Stat., s. 860; act Feb. 25, 1868; Deady, J., in U. S. v. Brown, 1 Sawyer, 536; per Miller, J., 2 Dillon, 405; Cong. Globe, 2d sess., 40th Cong., p. 951; the Commonwealth v. Kimball, 24 Pick., 369.

**Self-crimination of witness.**—H. was tried by court-martial and found guilty of the offense charged. At the trial a witness objected to answering a question on the ground of self-crimination, but the court required him to answer, the judge-advocate reading in support of this requirement the section cited: *Held*, that if the court committed an error in compelling the witness to answer, the error is not such as to require a disapproval of the proceedings.

Whether the effect of that section is to take away from a witness the common-law privilege of declining to answer a question which tends to criminate him, when it is manifest that he could only be tried in the courts of the United States, quære.

Rev. Stat., s. 417; 16 A. G. Op., 152.

**Sewers.**—The Secretary of the Navy can not grant to a city the right to construct and maintain a sewer upon the grounds of a United States naval hospital.

23 Stat. L., 291, 430; 25 Stat. L., 467.

**Ships, wooden, repair of,** when damaged in foreign waters.

Rev. Stat., ss. 4577, 4579; 21 A. G. Op., 25, Olney, May 24, 1894. This opinion was reaffirmed June 14, 1894.

**Shipwrecked seamen, withholding pay from.**—Where a United States consul-general has provided shipwrecked, destitute seamen with food, clothing, and passage to a port in this country, the amount so expended should not be deducted from the wages of such seamen.

**Shore duty.**—This statute provides "that hereafter no officer of the Navy shall be employed on any shore duty, except in cases especially provided by law, unless the Secretary of the Navy shall determine that the employment of an officer on such duty is required by the public interests, and he shall so state in the order of employment, and also the duration of such service, beyond which time it shall not continue." 22 Stat. L., 481; act Mar. 3, 1883.

**Speed premiums.**—The appropriation for special speed premiums made by the statute cited is not limited in its application to premiums earned prior to January 1, 1894. Act July 26, 1894, ch. 165; 21 A. G. Op., 84, Olney, Nov. 16, 1894.

**Status, officer.**—The status of Commander Joshua Bishop considered, and *held* that he must be regarded as still on the active list of the Navy. Rev. Stat., s. 1443; 21 A. G. Op., 103, Olney, Dec. 21, 1894.

**Storekeeper.**—The commander of a squadron can not appoint a storekeeper, and a person so appointed can not recover pay for services as such. Rev. Stat., s. 1568; Larkin *v.* U. S., 19 C. Cls. R., 170.

**Stores, naval,** provision for the appraisal and sale of condemned stores that are unserviceable. 22 Stat. L., 296, s. 2.

**Sufficiency of bondsmen, cost of certificate of.**—There is no law requiring a United States judge or a United States attorney to certify as to the sufficiency of guarantors or bondsmen offered in connection with proposals and contracts with the Navy Department, and no fees are chargeable against the Government for such service. Rev. Stat., 3719; 19 A. G. Op., 181.

The expense of obtaining a certificate from the office must be borne by the bidder or contractor as other expenses are incurred by him in the proper execution of the papers.

**Supplies, naval, contracts—withdrawing bid.**—The Secretary of the Navy is obliged to give contracts for supplies to the lowest bidder who fills the requirements as to security, etc., although the Secretary is the person charged with the duty of ascertaining the facts in this regard, and his decision is not reviewable in any court. Rev. Stat., ss. 3709, 3710, 3718, 3719, 3722; also s. 3724; Twiss *v.* City of Port Huron, 63 Mich., 528, 531; 9 A. G. Op., 174; 15 A. G. Op., 648, 651; Rev. Stat., s. 3719; Whitney, Acting A. G., Aug. 31, 1894.

(*a*) *Withdrawal of bid.*—In the absence of any special statutory provision to the contrary, a bidder for a Government contract may withdraw his bid at any time until notice of acceptance.

(*b*) *Quære.*—Whether there is any such special statutory provision relating to the Navy Department?

**Sureties.**—Two supplemental contracts made with a contractor when the contract itself had contemplated and provided for such changes, which have been made in the manner fixed by the contract, do not impair the obligations of the sureties on the contractor's bond. 20 A. G. Op., 749, Olney, Mar. 19, 1894.

**Sureties upon Government contracts.**—A surety upon the bond of a Government contractor is not discharged from liability thereon by the contractor's thereafter agreeing to pay the moneys received by him to some third person, or entering into any partnership, or being served with an injunction order restraining him from paying out any of such moneys except to the plaintiff in the injunction suit, 20 A. G. Op., 643, Olney, Aug. 17, 1893.

the Government not recognizing any of such proceedings in any way.

Rev. Stat., ss. 1411, 1412; act Feb. 15, 1879, ch. 83; 20 Stat. L., 294.

**Surgeons, acting assistant,** are required by the sections cited to sustain an examination, physical and professional, to be eligible to appointment in the Navy. If they fail in the examination or are physically disqualified, they shall be mustered out of the service, but if physically disqualified in line of duty, they may be placed on the retired list with pay of like officers in the Regular Navy. Acting assistant surgeons for temporary service shall not be appointed, except in case of war.

Collin's Case, 14 C. Cls. R., 568; Moore's Case, 95 U. S., 760; Germaine's Case, 99 U.S., 503; 22 Stat. L., 472.

**Surgeon, passed assistant,** is an office, and a valid appointment thereto is made by a notification from the Secretary of the Navy, though the statutes do not prescribe the manner of appointment. The statutes cited in the margin provide that "two assistant surgeons not in the line of promotion shall hereafter, after fifteen years' service, be entitled to receive, as annual pay, when at sea, two thousand one hundred dollars, when on shore duty, one thousand eight hundred dollars, and when on leave or waiting orders, one thousand six hundred dollars." Section 1375, Revised Statutes, supplies the words "who (the above surgeons) shall receive the highest shore pay of his grade."

19 Stat. L., 240; 15 A. G. Op., 259.

(a) Rev. Stat., s. 1556; U. S. v. Moore, 95 U. S., 760.

(a) *Date of appointment, etc.*—The words "after date of appointment" and "from such date," in the clause of section 1556 relating to passed assistant surgeons, etc., refer not to their original entry into the service, but to the notification by the Secretary of the Navy that the officer has passed his examination for promotion.

(b) By act of February 13, 1897 (29 Stat. L., 526), it is provided that assistant and passed assistant surgeons shall be regularly examined, promoted and commissioned. This is a statutory recognition of the *grade* of passed assistant surgeon.

Acts Aug. 5, 1882, and Mar. 2, 1889; 19 A.G.Op., 358. Miller, July 9, 1889.

**Surplus graduates of the Naval Academy.**—Where certain members of the graduating class at the Naval Academy were reported as physically disqualified for the naval service, but as mentally and professionally qualified, and were placed among the "surplus graduates:" *Advised* that under the acts cited they were each entitled as such surplus graduates to a certificate of graduation, an honorable discharge, and one year's pay, and that there is no authority in the law for stating in such certificate the physical disqualification of the graduate.

Rev. Stat., s. 3721; 21 Stat. L., 509, ch. 147.

**Tobacco for the Navy.**—The section cited provides for the purchase by advertisement of tobacco for the Navy.

(a) 23 Stat. L., 159, s. 4.

(a) "*Ordnance and gunpowder.*"—These words were defined by the statute (22 Stat. L.) cited, but that statute was repealed by the statute cited under (a).

Rev. Stat., s. 1580; 21 Stat. L., 86, ch. 73.

**Tomatoes, desiccated.**—The Secretary of the Navy may substitute desiccated potatoes for.

25 Stat. L., 459.

**Torpedo station.**—The statute cited authorizes the Secretary of the Navy to consolidate and place under one command

the torpedo station and the Naval War College at Newport, R. I., after January 1, 1889.

**Transfer of contract.**—A manufacturing company, after having entered into a contract with the Navy Department to deliver a large quantity of steel castings to be used in the construction of an armored cruiser, proposed to transfer the contract to another manufacturing company, which contemplated fulfilling the covenants of the former company with the Government, and asked the approval of such transfer by the Secretary of the Navy: *Advised* that, in view of the prohibition of the section cited, the proposed transfer can not lawfully be approved and recognized by the Navy Department.

Rev. Stat., s. 3737; 19 A. G. Op., 186.

**Transfer of men from service in the Army to the Navy.**—The act of July 1, 1864, providing for the transfer of men from the Army to the Navy was intended more to meet certain exigencies existing at the time of its enactment than to establish permanent relations of the military and naval service.

Rev. Stat., s. 1421; 1 Com. D., 696.

**Transportation of enlisted men of the Navy—Bond-aided railroad.**—The section cited is interpreted to include seamen as well as land troops. The Government having contracted with the West Shore Railroad, a corporation of the State of New York, for the immediate transportation to San Francisco of certain enlisted seamen then in the city of New York, and a portion of the route being over railroads aided by the United States in pursuance of the act cited, and a question having arisen as to whether payment of said contract price should be made to the West Shore Railroad: *Held*, that the question was essentially a judicial one; that a construction should not be put on the law by the executive department that would enable the bond-aided railroad to receive payment from the Treasury for services that are in effect services rendered the Government; and that all compensation to the bond-aided railroad, in so far as such service was performed by the said aided railroad, should be withheld until the rights of such railroad are adjusted by an agreement in compliance with the terms of the law or are judicially determined.

Act July 1, 1862, ch. 120, s. 6; 20 A. G. Op., 11, Miller, Feb. 4, 1891.

**Traveling expenses.**—The statute cited provides "that no allowance shall be made in the settlement of any account for traveling expenses (of officers traveling under orders) unless the same be incurred on the order of the Secretary of the Navy or the allowance be approved by him."

Rev. Stat., s. 430; 18 Stat. L., 297, ch. 18.

(*a*) *Officer entitled to actual expenses for travel in attending as a witness, etc.*—An officer of the Navy is entitled only to actual and necessary expenses for travel performed in attending as a witness before a United States grand jury, in response to a subpœna, notwithstanding he may have been ordered by his superior officer to perform the travel in answer to said subpœna.

(*a*) Opinion of Comptroller of the Treasury, Sept. 25, 1897, in claim of Lieut. John H. Shipley, for mileage.

**Unexpended balances—Cruisers.**—The unexpended balances of the appropriations made by the act of March 3, 1883, cited, may be used in completing the hulls and machin-

22 Stat. L., 477, act Mar. 3, 1883; 18 A. G. Op., 566; Garland, Mar. 12, 1887.

ery of the cruisers Chicago, Boston, and Atlanta, provided the total expenditure shall not exceed the total estimated cost thereof as reported by the Naval Advisory Board.

The balance of the appropriation made for a specific purpose may be used for that purpose in the discharge of obligations imposed by a lawful continuous contract.

26 Stat. L., 562; act July 28, 1892, ch. 315; act Oct. 1, 1890; 17 A. G. Op., 117; and id., 398; 20 A. G. Op., 433, Miller, Aug. 10, 1892.

**Vacancies, Marine Corps.**—A question having arisen as to whether the officers to be promoted in the United States Marine Corps to vacancies existing in the offices of major, captain, and first lieutenant, said succession of vacancies having been created July 10, 1892, should or should not be examined under the act providing for the examination of certain officers of the Marine Corps and regulating proceedings therein, of date July 28, 1892, chapter 315, the opinion was given that the promotions under consideration might be made without the examination in question.

Rev. Stat., ss. 177, 179, 180, 181; 20 A. G. Op., 8, Miller, Jan. 31, 1891.

**Vacancy in head of Departments.**—Where there is a vacancy in the head of a Department, it can not be temporarily filled for a longer period than ten days, either by operation of law or by designation of the President. In so far as the second opinion cited holds that twenty days may be taken by the President, by allowing the statutory occupation of the office for ten days without designation and then making a designation for an additional ten days, not accepted.

17 A. G. Op., 535.

22 Stat. L., 599, s. 5; 22 Stat. L., 291, 476.

**Vessels**, naval, provision for the appraisal and sale of condemned vessels; provision for the preservation and repair of.

Harmon's Case, C. Cls., R., 406. Harmon's Case, 23 C. Cls., R., 132; Gramb's Case, id., 420.

**Vested rights.**—The act of August 5, 1882, was constitutional, but did not create for the officer referred to a vested right.

A naval cadet has no vested right to appointment as an officer in the Navy, and is liable to be discharged if there is no vacancy to which he can be appointed.

See "Admiral" for opinions of the Adjutant-General and U. S. Supreme Court.

**"Vice-Admiral,"** expresses title in section 1362, Revised Statutes, edition 1878, the same as "Admiral."

Act Feb. 14, 1879, ch. 68; 20 Stat. L., 284.

**Visitors, Board of, to Naval Academy.**—Provision is made for a Board of Visitors to attend the annual examination of the Academy, each member to receive not to exceed 8 cents per mile as mileage by the most direct route to and from his residence and Annapolis.

(a) Act July 26, 1886; 24 Stat. L., 156.

(a) *Per diem.*—Statute cited allows each member $5 per day for expenses during actual attendance.

(b) Act Aug. 4, 1886, ch. 903; 24 Stat. L., 268.

(b) *Intoxicating liquors.*—The statute cited under (b) provides that no part of the appropriation by Congress for expenses of the Board shall be used to pay for intoxicating liquors.

Rev. Stat., ss. 1411, 1412; statute of February 15, 1879, chapter 83; 20 Stat. L., 294.

**Volunteer officers, line**, under sections cited, are required to be examined, and authorizes them, if found qualified, to be appointed in the Navy, or, if not so qualified, to be mustered out of the service; provided that such officers, if physically disabled in line of duty, may be placed on

the retired list with pay of like officers in the Regular Navy.

(a) *Credit for sea service.*—To entitle an officer to credit for sea service under section 1412, he must have been in the Volunteer Navy at the time of his appointment to the Regular Navy; and if he ceased to be an officer in the Volunteer Navy prior to such appointment, however brief the interval, he is not within the statute. The last clause of section 1412 means that officers transferred from the volunteer to the regular naval service shall have whatever benefits their past sea duty would entitle them to, if, during the period of its performance, they had belonged to the regular naval service, holding, not the same grade as those to which they are transferred, but grades corresponding to those at that period held by them in the volunteer naval service.

(a) Rev. Stat., s. 1412; 14 A. G. Op. 142; id., 358; 16 id., 45.

**War College, Naval.**—The Secretary of the Navy is authorized to consolidate and place under one command the Torpedo Station and the Naval War College at Newport, R. I., after January 1, 1889.

25 Stat. L., 459.

**Warrant officers,** in Johnson *v.* United States, were held included under the words "said officers" in statutes relating to the Navy, though not expressly named therein.

Rev. Stat. s. 1406; 2 C. Cls. R., 167.

**Witnesses before courts-martial.**—Where a civilian witness is brought before a court-martial but refuses to testify, the court is not invested with any inherent power to punish the witness in such case, either summarily or otherwise, as for a contempt. Such power can only be exercised by it when given by the positive terms of some statute. The section cited arms the court with authority to compel the witness to appear and testify, so far as this can be done by process; but in securing his testimony the court is restricted to the means which it is thus authorized to employ. It can not inflict any punishment where the power to impose it is not clearly conferred by Congress.

Rev. Stat., s. 1202; 18 A. G. Op., 278, Garland, Oct. 23, 1885.

**Works, public.**—The Secretary of the Navy has no power to incur any obligation for work on an uncompleted dry dock when its appropriation has been exhausted, even though immediate action is very important.

Rev. Stat., ss. 3732, 3733, 5503; 21 (part 2) A. G. Op., 288, Harmon, Jan. 2, 1896.

**Writ of prohibition.**—This writ does not lie to the Secretary of the Navy convening a naval court-martial.

Smith *v.* Whitney, 116 U.S., 167; U. S. *v.* Whitney, 4 Mackey, 535.

**Yards, navy.**—By the statute of June 30, 1876, cited, no increase of the force at any navy-yard is to be made within sixty days next before any election for President or Member of Congress except upon the Secretary of the Navy's certificate of public necessity therefor, which certificate is to be immediately published.

Rev. Stat., ss. 1543, 1544; act June 30, 1876, ch. 159; 19 Stat. L., 65.

*Officers appointed to locate.*—Navy commissions of officers to be appointed to locate yards on or near the coast of the Gulf of Mexico and the South Atlantic coast, and another in Oregon, Washington (Territory), or Alaska; and to report to the Secretary of the Navy, who shall transmit said report, with his recommendations, to Congress.

25 Stat. L., 463.

# ADDENDA.

## UNITED STATES STATUTES ENACTED BY SECOND SESSION FIFTY-FIFTH CONGRESS.

Mar. 30, 1898.

An act for the relief of the sufferers by the destruction of the U. S. S. Maine, in the harbor of Havana, Cuba.

That to reimburse the survivors of the officers and crew of the United States steamer Maine, destroyed by an explosion in the harbor of Havana, Cuba, on the fifteenth day of February, eighteen hundred and ninety-eight, for losses incurred by them, respectively, in the destruction of said vessel, there shall be paid to each of said survivors, out of any money in the Treasury of the United States not otherwise appropriated, a sum equal to the losses so sustained by them: *Provided*, That the accounting officers of the Treasury shall in all cases require a schedule and affidavit from each person making a claim under this Act, such schedule to be approved by the Secretary of the Navy; and reimbursement shall be made for such articles of clothing, outfit, and for such personal effects only as are of a character and value and in quantity suitable and appropriate to the rank or rating and duty of the person by whom the claim is made: *Provided further*, That in no case shall the aggregate sum allowed for such losses exceed the amount of twelve months' sea pay (without rations) of the grade or rating held by such person at the time the losses were incurred.

SEC. 2. That the widow, child, or children, and in case there be not such, that the parent or parents, and if there be no parent, the brothers and sisters, of the officers, enlisted men, and others who were lost in the destruction of said vessel, or who have died or who may die within one year from date of the disaster in consequence of injuries received in the destruction of said vessel, shall be entitled to and shall receive, out of any money in the Treasury of the United States not otherwise appropriated, to wit: The relative, in the order named, of the persons heretofore referred to, a sum equal to twelve months' sea pay of the grade or rating of each person deceased as aforesaid: *Provided*, That the legal representatives of the deceased persons hereinbefore referred to shall also be paid from the Treasury of the United States any arrears of pay due the deceased at the time of their death: *Provided further*, That if any person who shall receive reimbursement under this Act, for losses incurred in said disaster, shall die within the year in consequence of injuries incurred in the destruction of said vessel, the amount so paid shall be deducted from the amount of twelve months' sea pay (without rations) allowed to such beneficiary by virtue of this Act of relief.

SEC. 3. That the accounting officers of the Treasury be, and they are hereby, authorized to continue for a period of three months any allotments which may have been made in favor of any relatives of the degrees hereinbefore enumerated by any of the officers and men attached to the United States ship Maine who lost their lives in or in consequence of the disaster to that vessel: *Provided*, That the amount of the allotments so continued shall be deducted from the amount of twelve months' sea pay allowed to such beneficiaries by virtue of this Act for their relief.

SEC. 4. That the relief granted by the provisions of this Act shall be in full satisfaction of any and all claims whatever against the United States on account of losses or death by the destruction of the United States steamer Maine; and any claim against the United States which shall be presented and acted upon under the authority of this Act shall be held to be finally determined and shall not in any manner thereafter be reopened, reconsidered, supplemented nor be subject to appeal in any form; and the method of presenting and establishing said claims hereinbefore presented shall be followed in lieu of those prescribed by acts or parts of acts heretofore enacted relating to the presentation and allowance of similar claims: *Provided*, That nothing herein shall affect the right of any of the beneficiaries under this Act to any pension to which they may be entitled under existing law after the expiration of one year from said fifteenth day of February, eighteen hundred and ninety-eight.

SEC. 5. That no claims shall be allowed under the provisions of this Act which shall not be presented within two years after the date of its passage.

SEC. 6. That the Secretary of the Navy be, and he is hereby, authorized, whenever in his discretion it may be deemed practicable and expedient, to cause the remains of all or any of those who perished in consequence of said disaster to be removed to the United States cemetery at Arlington: *Provided*, That the relatives of any of such deceased officers and others mentioned in this Act who prefer that the remains of such be taken to their homes within the United States shall have such privilege extended to them, and the expense thereof shall be borne by the United States; and the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to carry out the provisions of this section.

Apr. 1, 1898.

Temporary admission free of duty of naval supplies.

That such guns, ammunition, and other naval and military supplies as may be purchased abroad by this Government for the national defense prior to January first, eighteen hundred and ninety-nine, shall be admitted at any port of entry in the United States free of duty.

Apr. 22, 1898.

Joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States.

That the President is hereby authorized, in his discretion, and with such limitations and exceptions as shall seem to him expedient, to prohibit the export of coal or other material used in war from any seaport of the United States until otherwise ordered by the President or by Congress.

May 4, 1898.

Design for statue of Admiral Porter.

The Secretary of the Navy is hereby directed to report to Congress a suitable design for a statute of David D. Porter, to be erected in the city of Washington, and the reasonable cost thereof.

Depots for coal.

To enable the Secretary of the Navy to execute the provisions of section fifteen hundred and fifty-two of the Revised Statutes authorizing the Secretary of the Navy to establish, at such places as he may deem necessary, suitable depots of coal, and other fuel, for the supply of steamships of war, two hundred and fifty thousand dollars, or so much thereof as may be necessary.

Pensions of sailors and marines admitted to Naval Home to be paid to Secretary of Navy.

And whenever any officer, seaman, or marine entitled to a pension is admitted to the Naval Home at Philadelphia, or to a naval hospital, his pension, while he remains there, shall be deducted from his accounts and paid to the Secretary of the Navy for the benefit of the fund from which such home or hospital, respectively, is maintained; and section forty-eight hundred and thirteen of the Revised Statutes of the United States is hereby amended accordingly.

Reimbursement of marines for loss of clothing by fire.

To reimburse the enlisted men of the United States Marine Corps who incurred loss of clothing by the fires which occurred at the navy-yard, Washington, District of Columbia, on the twenty-second and twenty-ninth days of April, eighteen hundred and ninety-seven, fifty-one dollars and seventy-three cents: *Provided*, That the accounting officers of the Treasury shall in all cases require a schedule and certificate from each person making a claim under this Act.

That section thirteen hundred and seventy of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

Appointment of assistant surgeons.

"No person shall be appointed assistant surgeon until he has been examined and approved by a board of naval surgeons designated by the Secretary of the Navy, nor who is under twenty-one or over thirty years of age, inclusive."

The President is hereby authorized to appoint for temporary service twenty-five acting assistant surgeons, who shall have the relative rank and compensation of assistant surgeons.

Repair of wooden ships.

That no part of this sum shall be applied to the repair of any wooden ship when the estimated cost of such repairs, to be appraised by a competent board of naval officers, shall exceed ten per centum of the estimated cost, appraised in like manner, of a new ship of the same size and like material: *Provided further*, That nothing herein contained shall deprive the Secretary of the Navy of the authority to cause the necessary repairs and preservation of the United States ship Hartford or to order repairs of ships damaged in foreign waters or on the high seas, so far as may be necessary to bring them home.

Preservation of U. S. ship *Hartford*.

Repair of steam machinery.

For completion, repairing, and preservation of machinery and boilers of naval vessels, including cost of new boilers; distilling, refrigerating, and auxiliary machinery; preservation of and small repairs to machinery and boilers in ves-

sels in ordinary, receiving and training vessels, repair and care of machinery of yard tugs and launches, six hundred thousand dollars: *Provided*, That no part of said sum shall be applied to the engines, boilers, and machinery of wooden ships where the estimated cost of such repair shall exceed ten per centum of the estimated cost of new engines and machinery of the same character and power, nor shall new boilers be constructed for wooden ships: *Provided further*, That nothing herein contained shall deprive the Secretary of the Navy of the authority to cause the necessary repairs and preservation of the United States ship Hartford or to order repairs of the engines, boilers, and machinery of ships damaged in foreign waters or on the high seas, so far as may be necessary to bring them home;

Appointment of officers by the President to meet emergency.

And whenever, within the next twelve months, an exigency may exist which, in the judgment of the President, renders their services necessary, he is hereby authorized to appoint from civil life and commission such officers of the line and staff, not above the rank or relative rank of commander, and warrant officers including warrant machinists, and such officers of the Marine Corps not above the rank of captain, to be appointed from the non-commissioned officers of the Corps and from civil life, as may be requisite: *Provided*, That such officers shall serve only during the continuance of the exigency under which their services are required in the existing war: *And provided further*, That such officers so appointed shall be assigned to duty with rank and pay of the grades established by existing law; and warrant machinists shall be paid at the rate of one thousand two hundred dollars per annum.

Secretary of Navy authorized to acquire by condemnation proceedings land for use of Navy.

The Secretary of the Navy is hereby authorized and directed to cause to be commenced, within three months after the passage of this Act, and the Attorney-General is hereby directed to carry on, proceedings for the condemnation of the following tract of land for the use of the United States for the Norfolk Navy-Yard, for the purpose of constructing a wet dock, and for other purposes, namely, the tract of land known as the Cedar Grove property, containing fifty acres, with a water front of one thousand six hundred feet on the Elizabeth River, immediately opposite to the Gosport Navy-Yard, in the State of Virginia, under the Act of Congress approved August first, eighteen hundred and eighty-eight, entitled "An Act to authorize the condemnation of land for sites of public buildings, and for other purposes," and other laws of the United States, so as to completely vest in the United States the title of said land. And all such proceedings shall be reported to Congress at its next session by the Secretary of the Navy.

Medals of honor authorized by certain acts.

That the Secretary of the Navy be, and he is hereby, authorized to issue to any person to whom a medal of honor has been awarded, or may hereafter be awarded, under the provisions of the Acts approved December twenty-first, eighteen hundred and sixty-one, and July sixteenth, eighteen hundred and sixty-two, a rosette or knot to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to

be prescribed and established by the President of the United States, and any appropriation that may hereafter be available for the contingent expenses of the Navy Department is hereby made available for the purposes of this Act: *Provided*, That whenever a ribbon issued under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it was issued, the Secretary of the Navy shall cause a new ribbon to be issued to such person without charge therefor.

Additional force for the Navy and Marine Corps.

To enable the Secretary of the Navy to enlist, at any time after the passage of this Act, as many additional seamen, landsmen, and boys as he may deem necessary to man the ships of the Navy, or in use by the Navy, as a temporary force therefor during the existing war, and for pay of the same and of the temporary additional officers and warrant machinists hereinbefore authorized, eight million eight hundred and thirty thousand dollars, or so much thereof as may be necessary; and to enable the Secretary of the Navy to enlist, at any time after the passage of this Act, the following additional force for the Marine Corps as a temporary force during the existing war, namely, not more than sixty gunnery sergeants with rank of first sergeants, not more than eighty corporals, and not more than one thousand five hundred privates, and for pay of the same, including the temporary additional officers hereinbefore authorized, and for provisions, clothing, fuel, military stores, transportation and recruiting, and for contingent expenses, on account of said additional force, five hundred and sixty-seven thousand nine hundred dollars, or so much thereof as may be necessary.

Construction of dry docks.

Toward the construction of four timber dry docks, two hundred thousand dollars each; in all, eight hundred thousand dollars; said dry docks to be not less than seven hundred feet in length, and of other dimensions sufficient to meet the present and probable future requirements of the largest vessels of the Navy and auxiliary fleet. One of these docks to be located at the navy-yard, Portsmouth, New Hampshire, to cost, when completed, not exceeding eight hundred and twenty-five thousand dollars; one at the navy-yard, Boston, Massachusetts, to cost, when completed, not exceeding eight hundred and twenty-five thousand dollars; one at the navy-yard, League Island, Pennsylvania, to cost, when completed, not exceeding eight hundred and twenty-five thousand dollars; and one at the navy-yard, Mare Island, California, to cost, when completed, not exceeding eight hundred and twenty-five thousand dollars; and the Secretary of the Navy is hereby authorized, in his discretion, to build one of said docks of granite or concrete faced with granite, and in such case the limit of the cost of said dock is increased two hundred thousand dollars.

Toward the construction of one steel floating dock of domestic manufacture which shall be a combined floating and graving dock, two hundred thousand dollars, said dock to be located at the naval reservation at Algiers, Louisiana,

to be capable of lifting a vessel of fifteen thousand tons displacement, and twenty-seven feet draft of water, to cost, including moorings and wharf, eight hundred and fifty thousand dollars.

The Secretary of the Navy may employ, and pay out of the appropriations for dry docks herein authorized, such additional expert aids, draftsmen, writers, and copyists as may be necessary for the preparation of plans and specifications, to an amount not to exceed ten thousand dollars.

And the Secretary of the Navy be, and is hereby, authorized, under the limitations hereinbefore provided, to make contracts for the entire construction of said dry docks, and steel floating dock, and in each case the contract shall be awarded to the lowest best responsible bidder.

The Secretary of the Navy is hereby authorized and directed to appoint a board of naval officers to determine the desirability of locating and constructing a dry dock of sufficient capacity to take the largest naval ship in the harbor of Galveston or in the harbor of Sabine Pass, or the waters tributary thereto, Texas, and a dry dock of the same capacity in the waters of Chesapeake Bay above the mouth of the Potomac River; and to report such finding to the next session of the present Congress; and the sum of one thousand dollars, or so much thereof as may be necessary, is hereby appropriated to defray the expenses of said board.

Increase of the Navy.

That for the purpose of further increasing the naval establishment of the United States the President is hereby authorized to have constructed by contract three seagoing coast-line battle ships carrying the heaviest armor and most powerful ordnance upon a displacement of about eleven thousand tons, to have the highest practicable speed for vessels of their class, and to cost, exclusive of armor and armament, not exceeding three million dollars each, one of said battle ships to be named the Maine; and four harbor-defense vessels of the monitor type, each having one or two turrets, and to cost, exclusive of armament, not exceeding one million two hundred and fifty thousand dollars each; and sixteen torpedo boat destroyers of about four hundred tons displacement, and twelve torpedo boats of about one hundred and fifty tons displacement, to have the highest practicable speed, and to cost in all, exclusive of armament, not exceeding six million nine hundred thousand dollars; and one gunboat to take the place of the United States steamship Michigan, to cost, exclusive of armament, not more than two hundred and sixty thousand dollars, said gunboat to be constructed on the Great Lakes or their connecting waters: *Provided*, That said construction of said gunboat shall conform to all existing treaties and conventions. And not more than two of said battle ships, and not more than two of said harbor-defense vessels, and not more than five of said torpedo-boat destroyers, and not more than four of said torpedo boats shall be built in one yard or by one contracting party, and the contracts for the construction of each of said vessels shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results and most expedi-

One gunboat for Great Lakes.

tions delivery; and in the construction of all said vessels all of the provisions of the Act of August third, eighteen hundred and eighty-six, entitled "An Act to increase the naval establishment," and amendments subsequently made thereto as to materials for said vessels, their engines, boilers, and machinery, the contracts under which they are built, except as to premiums, which are not to be offered, the notice of any proposals for the same, the plans, drawings, and specifications therefor, and the method of executing said contracts, shall be observed and followed, and said vessels shall be built in compliance with the terms of said Act, save that in all their parts said vessels shall be of domestic manufacture except that no proposal for the torpedo vessels shall be considered unless the bidder is already in possession of adequate plant, and that the advertisement relating to the proposals for such vessels may be published for three weeks only; and, subject to the provisions hereinafter made, one and not more than one of the aforesaid seagoing battle ships, and one and not more than one of the aforesaid harbor-defense vessels, shall be built on or near the coast of the Pacific Ocean or in the waters connecting therewith: *Provided*, That if it shall appear to the satisfaction of the President of the United States, from the biddings for such contracts when the same are opened and examined by him, said vessel, or either of them, can not be constructed on or near the coast of the Pacific Ocean at a cost not exceeding four per centum above the lowest accepted bid for the other battle ships or harbor-defense vessels provided for in this Act, he shall authorize the construction of said vessel, or either of them, elsewhere in the United States, subject to the limitations as to cost hereinbefore provided.

Plans and drawings.

Vessels in all parts must be of domestic manufacture.

On account of the hulls and outfits of vessels and steam machinery of vessels heretofore and herein authorized, thirteen million six hundred and forty-eight thousand four hundred and seventy-three dollars: *Provided*, That section two or the Act entitled "An Act to increase the naval establishment," approved August third, eighteen hundred and eighty-six, be, and the same is hereby, amended so as to read as follows:

Construction and machinery.

"SEC. 2. That in the construction of all naval vessels the steel material shall be of domestic manufacture, and of the quality and characteristics best adapted to the various purposes for which it may be used, in accordance with specifications approved by the Secretary of the Navy."

Toward the armament and armor of domestic manufacture for the vessels authorized by the Act of July twenty-sixth, eighteen hundred and ninety-four, of the vessels authorized under the Act of March second, eighteen hundred and ninety-five, of those authorized by the Act of June tenth, eighteen hundred and ninety-six, of the three torpedo boats authorized by the Act of March third, eighteen hundred and ninety-seven, and of those authorized by this Act, including the completion of ordnance outfit for the four harbor-defense vessels, the sixteen torpedo-boat destroyers, and twelve torpedo boats named herein, seven million one

Armor and armament.

hundred and sixty-two thousand eight hundred dollars: *Provided*, That the total cost of the armor according to the plans and specifications already prepared, for the three battle ships authorized by the Act of June tenth, eighteen hundred and ninety-six, shall not exceed three million two hundred and ten thousand dollars, including all cost of nickel in the same, and exclusive of the cost of transportation, ballistic test plates, and tests, and royalty for steel face-hardening process, not to exceed one-half cent per pound, and which can not be made use of without the payment of royalty, and no contract for armor plate shall be made at an average rate to exceed four hundred dollars per ton of two thousand two hundred and forty pounds, including nickel as aforesaid. That hereafter all first-class battle ships and monitors owned by the United States shall be named for the States, and shall not be named for any city, place, or person until the names of the States shall have been exhausted: *Provided*, That nothing herein contained shall be so construed as to interfere with the names of States already assigned to any such battle ship or monitor.

Names of vessels.

Equipment.

Toward the completion of the equipment outfit of the new vessels heretofore and herein authorized, three hundred and seventy-five thousand dollars.

Electric plants.

For the installation of electric plants in gunboats numbered ten, eleven, twelve, and thirteen, forty thousand dollars.

The President may make appropriation immediately available.

It is further provided that whenever in the judgment of the President, the public inrerests may require he is authorized and empowered to make any or all the provisions and appropriations of this Act immediately operative and available.

May 11, 1898.

Naval battalion in District of Columbia.

That in addition to the companies of volunteer militia now authorized in the District of Columbia there may be organized not more than four companies of naval militia, which shall constitute a battalion to be known as the naval battalion of the National Guard of the District of Columbia.

Officers of battalion.

SEC. 2. That the officers of the naval battalion shall consist of one commander, and a staff to consist of one executive officer with the rank of lieutenant-commander, one navigating officer with the rank of lieutenant, one signal, ordnance, and equipment officer with the rank of lieutenant, one chief engineer, one paymaster, and one surgeon, each with the relative rank of lieutenant.

Composition of company.

SEC. 3. That each company shall consist of one lieutenant, one lieutenant, junior grade, two ensigns, and not less than sixty nor more than one hundred petty officers and enlisted men.

SEC. 4. That in all matters not otherwise specially provided for, the provisions of law which provide for the organization of the militia of the District of Columbia shall apply to the naval battalion.

General routine of duty, etc., of battalion.

SEC. 5. That general routine of duty, discipline, and exercises of the naval battalion, and parts thereof, shall conform with the laws, customs, and usages of the Navy, as far as the same apply, and where they do not apply then such routine of duty, discipline, and exercises shall con-

form to the laws governing the volunteer forces of the District of Columbia.

May 26, 1898.

United States Auxiliary Naval Force.

That a United States Auxiliary Naval Force is hereby authorized to be established, to be enrolled in such numbers as the President may deem necessary, not exceeding three thousand enlisted men, for the exigencies of the present war with Spain, and to serve for a period of one year, or less, and shall be disbanded by the President at the conclusion of the war.

Chief of the force.

SEC. 2. That the chief of the United States Auxiliary Naval Force shall be detailed by the Secretary of the Navy from the active or retired list of the line officers of the Navy not below the grade of captain, who shall receive the highest pay of his grade while so employed.

Enlistment in the force.

SEC. 3. That enlistment into the United States Auxiliary Naval Force shall be made by such officer or officers as the Navy Department may detail for the purpose, who shall also select from merchant vessels and other available sources such volunteers as may be deemed best fitted for service as officers in said force, and shall report to the Secretary of the Navy, for his action, their names and the grade for which each is recommended.

Shall be divided into districts.

SEC. 4. That for the purposes of this organization the coast line shall be divided into districts, each of which shall be in charge of an assistant to the chief of the United States Auxiliary Naval Force; and such assistant chiefs may be detailed by the Secretary of the Navy from the officers of the active or retired list of the line of the Navy, or appointed by him from civil life, not above the rank of lieutenant-commander.

Pay of officers and men.

SEC. 5. That the officers and men comprising the United States Auxiliary Naval Force shall receive the same pay and emoluments as those holding similar rank or rate in the Regular Navy; and all matters relating to the organization, discipline, and government of men in said force shall conform to the laws and regulations governing the United States Navy.

Naval Militia may be mustered into auxiliary force.

SEC. 6. That the chief of the United States Auxiliary Naval Force or such officers as the Navy Department may detail for such service, may, with the consent of the Governor of any State, muster into the said Force the whole or any part of the organizations of the Naval Militia of any State to serve in said Auxiliary Naval Force, and shall report to the Secretary of the Navy, for his action, the names and grades for which commissions in said United States Auxiliary Naval Force shall be issued to the officers of such Naval Militia, and shall have the power to appoint and disrate the petty officers thereof.

Paid from "Pay of the Navy."

SEC. 7. That the officers, warrant officers, petty officers, and enlisted men and boys of the United States Auxiliary Naval Force thus created shall be paid from the appropriation "Pay of the Navy;" and the sum of three million dollars, or so much thereof as may be required, is hereby appropriated, from any money in the Treasury not otherwise appropriated, for the purchase or hire of vessels necessary for the purposes of this resolution.

May 26, 1898.

Joint resolution ratifying and confirming certain temporary appointments of officers of the Navy.

That the temporary appointments made by the President on and after April twenty-first, eighteen hundred and ninety-eight, and up to the date of the passage of this joint resolution, of officers of the line and staff of the Navy, are hereby ratified and confirmed, to continue in force during the exigency under which their services are required in the existing war: *Provided*, That the officers so appointed shall be assigned to duty with rank and pay of the grades established by existing law, and shall be paid from the appropriation "Pay of the Navy."

June 8, 1898.

Support of naval establishment.

Navy Department emergency fund.

For special necessities of the various naval squadrons; for the charter or purchase of suitable vessels; for the increase of small craft attached to the various squadrons, and for replacing such as may be lost or destroyed; for maintaining and destroying communication; and for obtaining information, ten million dollars, of which sum not more than five hundred thousand dollars may be used to meet contingencies that can not be foreseen, but which constantly arise under existing conditions.

Bureau of Supplies and Accounts.

Commuted rations.

For provisions and commuted rations for the seamen and marines, which commuted rations may be paid to caterers of messes, in cases of death or desertion, upon orders of the commanding officer, commuted rations for officers on sea duty and naval cadets, and commuted rations stopped on account of sick in hospital and credited to the naval hospital fund, subsistence of officers and men unavoidably detained or absent from vessels to which attached under orders (during which subsistence rations to be stopped on board ship and no credit for commutation therefor to be given); fresh water for drinking and cooking purposes; labor in general storehouses and paymasters' offices in navy-yards, including expenses in handling stores purchased under the naval supply fund, one million dollars.

For purchase of clothing and small stores for issue to the naval service, the present fund being inadequate to meet the requirements of the service at this time, to be added to the "Clothing and small stores fund," one million dollars.

June 16, 1898.

An act for the protection of homestead settlers who enter the military or naval service of the United States in time of war.

That in every case in which a settler on the public land of the United States under the homestead laws enlists or is actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the existing war with Spain, or during any other war in which the United States may be engaged, his services therein shall, in the administration of the homestead laws, be construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, unless it shall be alleged in the preliminary affidavit or affidavits of contest, and proved at the hearing in cases hereafter initiated, that the settler's alleged absence from the land was not due to his employment in such service: *Provided*, That if such settler shall be discharged on account of wounds received or disability in-

curred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence without reference to the time of actual service: *Provided further*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

June 17, 1898.

Hospital corps, establishment of, etc.

That a hospital corps of the United States Navy is hereby established, and shall consist of pharmacists, hospital stewards, hospital apprentices (first class), and hospital apprentices; and for this purpose the Secretary of the Navy is empowered to appoint twenty-five pharmacists with the rank, pay, and privileges of warrant officers, removable in the discretion of the Secretary, and to enlist, or cause to be enlisted, as many hospital stewards, hospital apprentices (first class), and hospital apprentices as in his judgment may be necessary, and to limit or fix the number, and to make such regulations as may be required for their enlistment and government. Enlisted men in the Navy or the Marine Corps shall be eligible for transfer to the hospital corps, and vacancies occurring in the grade of pharmacist shall be filled by the Secretary of the Navy by selection from those holding the rate of hospital steward.

Ambulance service.

SEC. 2. That all necessary hospital and ambulance service at naval hospitals, naval stations, navy-yards, and marine barracks, and on vessels of the Navy, Coast Survey, and Fish Commission, shall be performed by the members of said corps, and the corps shall be permanently attached to the Medical Department of the Navy, and shall be included in the effective strength of the Navy and be counted as a part of the enlisted force provided by law, and shall be subject to the laws and regulations for the government of the Navy.

Hospital stewards' pay.

SEC. 3. That the pay of hospital stewards shall be sixty dollars a month, and the pay of hospital apprentices (first class) thirty dollars a month, and the pay of hospital apprentices twenty dollars a month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men in the Navy.

Benefits to warrant officers.

SEC. 4. That all benefits derived from existing laws, or that may hereafter be allowed by law, to other warrant officers or enlisted men in the Navy shall be allowed in the same manner to the warrant officers or enlisted men in the hospital corps of the Navy.

SEC. 5. That all acts and parts of acts, so far as they conflict with the provisions of this Act, are hereby repealed.

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